United States Court of Appeals

for the Second Circuit

APPELLANT'S APPENDIX

76-5041

In The

United States Court of Appeals

For The Second Circuit

In the Matter of

Robert A. Martin a/k/a R. Allan Martin a/k/a Robert Allan Martin,

Bankrupt-Appellant.

Appeal From the United States District Court For the Southern District of New York, Honorable Edmund L. Palmieri, District Judge

APPENDIX

HOFHEIMER GARTLIR GOTTLIEB
& GROSS
Attorneys for Bankrupt-Appellant
Robert A. Martin
100 Park Avenue
New York, New York 10017
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FEB 24 1976
SECOND CIRCUIT

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DOCKET ENTRIES

NAME OF BANKRUPT/DEBTOR

ROBERT A. MARTIN, a/k/a R. ALLAN MARTIN,
a/k/a ROBERT ALLAN MARTIN

DIST. NO. 208 | DIV. NO. | DOCKET NO. 65 B 153

CHAPTER OR SECTION | CHECK IF

DATE PETITION FILED 3-4-65

DATE CLOSED | OCCUPATION

DISCHARGE: Granted | Denied | Waived or Act applied to | (Check one)

DATE DISCHARGED

PETITION DISMISSED? ☐ YES | DATE DISMISSED

NAME OF JUDGE

ADDRESS OF BANKRUPT/DEBTOR (Number and Street)

Res.
17 Spring Hill Drive

CITY: West Orange | ZONE | COUNTY: Essex | STATE: N.J.

NAME OF REFEREE: Asa S. Herzog

NO ASSET CASES ONLY — CLAIMS AS SCHEDULED	TOTAL	PRIORITY	SECURED	UNSECURED
	$	$	$	$

	NAMES AND ADDRESSES
ATTORNEY FOR BANKRUPT OR DEBTOR	[illegible] Hofheimer, Gartlir, Hofheimer, Gottlieb & Gross, 61 Broadway, NYC
ATTORNEY FOR PETITIONING CREDITORS	
RECEIVER	
ATTORNEY FOR RECEIVER	
TRUSTEE	Barton Nachamie ($1,000.00 bond) 11 West 42nd St., NYC
ATTORNEY FOR TRUSTEE	Levy, Levy & Ruback, Esqs. 225 Broadway, NYC

CHANGES OF PRINCIPALS

DATE	PROCEEDINGS
Mar 4-65	Filed petition, schedules and statement of affairs - referred to Referee Herzog
March 8	Received from Clerk of Court the above papers.
March 9	Referee signed order fixing the 23rd day of April as the last day to file specifications against the bankrupts discharge.
March 10	X Sent 113 notices of first meeting of creditors with discharge filed EL affidavit of mailing.

(over)

FORM BK 74
SEP. 1952

UNITED STATES DISTRICT COURTS
BANKRUPTCY DOCKET

X CHECK THIS BOX IF FILING FEES WERE PAID IN FULL AT TIME OF FILING

DATE	
3/22 22	First Meeting of Creditors held, examination took place. Barton Nachamie of 11 W. 42nd St., NYC was elected trustee under a $1,000.00 bond and hearing was adjourned to May 3 at 2:30. Referee signed order approving election of trustee.
3/25	Trustee filed his bond.
3/25	Referee signed order approving trustee's bond.
3/29	Referee signed order for retention of attorneys for trustee.
3/29	Referee signed order extending time to file objections to bankrupt's discharge to July 30, 1965.
4/2	Referee signed order staying state court suits and proceedings,
4/5	Filed minutes of First Meeting of Creditors.
4/13	Filed specifications of objections to bankrupt's discharge. $10.00 paid to Clerk of Court, receipt # 29656.
4/20	Referee signed order extending time to file objections to bankrupt'x discharge to June 3, 1965.
4/20	Referee vacated 4/20/65 order in view of 3/29/65 order extending time to file specifications to July 30, 1965.
5/3	AFM held and adjourned to May 27 at 2:00.
5/27	Filed OSC on petition for removal of trustee. Ret: May 27 at 2:00.
5/27	OSC to remove trustee held and closed. AFM adjourned to June 28 at 2:00.
6/2	Referee signed order denying petition for removal of trustee.
6/9	Filed trustee's first interim report.
6/28	AFM adjourned to August 17 at 11:00.
7/27	Referee signed order extending time to file specifications of objection to bankrupt's discharge to Sept. 30, 1965.
8/17	AFM held & adj. to 9/24 at 11:00
9/20	Referee signed order extedning the last day to filed specifications of objection to bankrupt's discharge to Nov. 30, 1965 See Memo endorsed.
9/24	AFM adjourned to November 5 at 11:00.
11/5	AFM adjourned to Dec 9 at 11:00.
11/23	Referee signed order extending time to file specifications of objections to bankrupts discharge to January 28, 1966.

ASA S. HERZOG

ROBERT MARTIN, etc. 65 B 153

DOCKET NUMBER

DATE	PROCEEDINGS
11/26	Filed trustee's second interim report.(no funds)
12/9	AFM held and adjourned to Jan 13 at 2:00.
1966	
1/4	Filed trustee's third interim report.
1/13	AFM adjourned to Feb 1 at 11:30.
1/27	Referee signed order extending time to file specifications against the bankrupts discharge to Feb 28, 1966.
2/1	AFM held and adjourned to 3/4 at 2:00.
2/24	Referee signed order extending time to file specifications against the bankrupts discharge to April 30, 1966.
3/4	AFM held and adjourned to 5/2 at 2:00.
4/27	Referee signed order exteinding time to file specificatons against the bankrupts discharge to June 30, 1966.
5/2	AFM adjourned to 5/12 at 2:00.
5/4	Filed n/m re: directing bankrupt to filed amended statement of affairs Ret May 12 at 2:00.
5/12	AFM held and adjourned to 6/20 at 10:30. Motion to compel filing of S/A held and closed.
5/16	Filed trustee's interim report.
5/31	Referee signed order directing bankrupt to file amended statement of affairs on or before June 20, 1966.
6/20	AFM adjourned to 8/25 at 2:00.
6/23	Filed affidavit of service by Attys for Trustee.
6/24	Referee signed order exteinding time to file specificatio against the bankrupts discharge to September 30, 1966
7/19	Referee signed order for examination under Section 21A .
8/25	AFM, held and adj. to September 9 at 11:30.
8/25	Referee 21a exam, held and adj. to September 9 at 11:30.
9/9	AFM, Adj. 21a exam held and adjourned to 10/7 at 10:30.
9/9	Filed statement of affairs in triplicate. copy sent to Clerk of Court
9/26	Referee signed order extending time to file specificatior against the bankrupts discharge to November 30, 1966,
10/7	AFM & Adj. 21a exam, Adj. to 11/10 at 2:00
10/7	Referee signed order for retention of accountants for Trustee.
11/4	Filed trustee's fifth interim report.
11/10	AFM held and adjourned to 12/1 at 2:00. Adj. 21a exam held and adjourned to 12/1 at 2:00.

DATE	PROCEEDINGS
11/18	Referee signed order extending time to file specifications against the bankrupts discharge to January 30, 1967.
12/1	AFM adjourned to 12/9 at XX 2:00.
12/9	AFM held and adjourned to 2/2 at 2:00.
12/16	Referee signed order extending time to file specifications against the bankrupts discharge to March 30, 1967.
1967	
2/2	AFM ad. 3/2 at 2:00.
3/3	AFM adj. 4/6 at 11:00.
3/21	Referee signed order exteinding time to file specifications against the bankrupts discharge to May 31, 1967.
4/6	AFM adj. 5/9 at 11:00.
5/9	AFM adj. 6/2 at 11:00.
5/23	Referee signed order extending time to file specifications against the bankrupt's discharge to July 31, 1967
5/31	Filed trustee's interim report.
6/2	AFM adj. 6/27 at 11:30.
6/27	AFM, adj. to 9/14 at 10:30
7/27	Referee signed order extending time to file objections to banksrupts discharge to October 31, 1967,
9/14	AFM scheduled for 9/14 reschedule for 10/10 at XX 2:00.
10/10	AFM adj. 11/9 at 2:00.
10/16	Referee signed order extending time to file specifications against the bankrupt's discharge to December 29, 1967.
11/9	Filed trustee's seventh interim report.
11/9	AFM adj. 1/4 at 2:00.
12/27	Referee signed order extending time to file specifications against the bankrupt's dsicharge to February 29, 1968.
+1968 1/4	AFM, adj. to 2/2 at 2:00
2/2	AFM adj. 3/1 at 3:00.
2/20	Referee signed order extending time to file specifications against the bankrupt's discharge to April 30, 1968.
3/1	AFM held and adj. 4/4 at 2:00.

FPI—LK—4-9-84—75M—3298

5a

ROBERT A. MARTIN

65 B 153 ASA S. HERZOG
DOCKET NUMBER

DATE	PROCEEDINGS
1968	
3/29	Filed letter of William S. Brown re: claim of Mr. Germaise filed on 4/20/65 Claim #18.(Letter attached to claim)
4/4	AFM held and ~~XX~~ adj. 6/13 at 2:00.
4/23	Referee signed order extending time to file specifications against the bankrupt's dischagge to July 12, 1968.
5/1	Referee signed order for 21a examination.
5/6	Filed trustee's interimrreport.
6/4	21a examination adj. 6/17 at 2:30.
6/13	AFM adj. 6/25 at 2:00.
6/17	21a exam adj. 8/5 at 2:00.
6/18	Referee signed order extending time to file specifications against the bankrupt's discharge to October 31, 1968.
6/25	AFM adj. 8/5 at 2:00.
8/5	AFM, held & closed. ~~XXX~~. Adj. 21a exam, ~~XXXX~~ held and adj. to 8/26 at 2:00.
0/26	Adj. 21a exam. adj. and held to Oct. 3 at 2:00.
10/3	Adj. 21a exam. held & closed.
10/28	Referee signed order extending time to file specifications of objections to the bankrupts discharge to 12/2/68.
10./28	Referee signed order for 21a exam.
10/30	Referee made memorandum notation on order dated 10/28/68 as follows: "order is hereby vacated-see page 333 of stenographic minutes, 8/5/68" Notice mailed to interested parties.
11/4	Filed trustee's ninth interim report (NONE)
12/2	[illegible]
12/2	Filed specifications of objections to bankrppts discharge paid $10.00 to Clerk of Court receipt # 69602.
12/9	Filed stipulatoin re: specifications of objection of Trustee.

FORM BK 74-E
SEP. 64

UNITED STATES DISTRICT COURT

BANKRUPTCY DOCKET—CONTINUATION

DATE	PROCEEDINGS
1968 cont'd	
12/12	Filed Stipulation by Atty for bankrupt re: Specifications of Objections to bankrupts discharge.
1969 Jan	mailed notice of hearing on discharge to all interested parties for February 17 at 2PM
1/17	Filed substitution for the Attys. for Bankrupt, Hofheimer, Gartlir, Hofheimer Gottlieb & Gross(substituted for Andrew Kuchinsky.)
1/22	Filed answer to objection to discharge together with letter of acceptance from atty. for trustee.
2/17	Hrg. on obj. to discharge further adj. to 3/4 at 2:00.
3/3	Hg on Obj. to discharge, adj. to 5/19 at 2:00.
5/19	Adj. hrg. on obj. to discharge held & adj. to 5/26 at 2;00.
5/21	Filed trustee's tenth interim report.
5/26	Adj. hrg. on discharge held & adj. to 6/5 at 10:30.
6/5	Adj. hrg. on discharge adj. to 6/26 at 10:30.
6/26	Adj. Hrg.on discharge adj. to 9/12 at 10:30.
9/12	Adj. hearing on discharge, adj. to Oct. 28th at 10:00.
10/28	Adj. hrg. on spec. adj. to Nov. 24th at 10:00.
11/10	Filed trustee's eleventh interim report.
11/24	Adj. hrg. on specifications adj. to Dec. 15th at 10:30.
1970* 1/29	Adj. Hrgon speicfications adj. to March 5th at 10:00.
3/5	Adj. Hrg. on spec., adj. to April 16th at 10:00
4/16	Adj. hrg. on spec. of obj. to discharge, adj. to 5/12 at 10:00
5/12	Adj. hrg. on specification of objs. todischarge, adj. to May 28 at 10:00

Asa S. Herzog

65 B 153
DOCKET NUMBER

ROBERT A. MARTIN

DATE	PROCEEDINGS
5/28/70	Filed trustee's 12th interim report.
5/28	Adj. hrg. on Specs. of Obj. to Discharge, adj. to 6/29 at 11:00
6/12	Filed n/m re: Obj. to claims ret. 6/29 at 11:00
6/29	Adj. Hrg. on Obj. to discharge adj. to 9/15 at 2:00 Obj. to claims, held & adj. to 7/23 at 11:00
6/30	Filed affidavit in opposition re: obj. to claim of Tracon Corp.
7/1	Referee signed order fixing claims.
7/23	ADJ. obj. to claims held and adj. 9/15 at 2:00.
9/15	Adj. Hrg. on Specs. to Discharge. Adj. Obj. to claims adj. to 10/13 at 2:00
10/13	Adj. hearing on spec. of obj. to discharge, adj. obj. to claims adj. to 11/17 at 2:00.
10/14	Filed answer by Cainsburg, Cottlieb, Levitan & Cole attys. for Centruy Industries Co. re: obj. to claim filed ret. 11/17 at 2:00.
11/13	Filed Trustee's thirteenth interim report.
11/17	Adj. hearing on spec. of obj. to discharge. Adj. obj. to claims adj. to 12/1 at 2:00.
12/1	Adj. Obj. to claims held and adj. to 1/8 at 10:30. Adj. Hearing on Spec. of Obj. to discharge adj. to 1/8 at 10:30.
12/4	REferee signed order reducing and allowing claims 16 and 23.
1/8	Adj. Obj. to claims , Adj. Hearing on spec. to obj. to discharge adj. to 2/8 at 11:00.
2/8	Adj. objection to claims, Adj. hearing on specifications of objections to discharge adj. to February 25, 1971 at 2:00.
2/25	Adj. objection to claims, Adj. hearing on specifications of objections to discharge adj. to April 26, 1971 at 2:00.
3/29	Referee signed order reducing claim #24 filed by Century Industries Co., Inc.

DATE	PROCEEDINGS
4/26/71	Adj. obj. to claims, Adj. hearing on specifications of objections to discharge adj. to May 3, 1971 at 2:00.
5/3	Adj. obj. to claims, Adj. hearing on spec. of obj. to discharge adj. to 6/29/71 at 2:00.
5/25	Filed trustee's fourteenth interim report.
6/29	Adj. Objections to claims, Adj. hearing on specifications of obj. to discharge adj. to 7/27/71 at 2:00.
7.27	Adj. objections to claims, Adj. hrg. on specifications of objections to discharge, adj. to Sept. 30, 1971 at 2:00.
9.30	Adj. objections to claims to 11.10.71 at 10:30, Adj. hrg. on specifications of objections to discharge held & adj. to 11.10.71 at 10:30.
11.10	Adj. objections to claims adj. to 1,10.72 at 2:00, Adj. hrg. on specifications of objecitons to discharge held & adj. to 1.10.72 at 2:00.
11.22	Filed trustee's fifteenth interim report.
1-10-72	Adj. objections to claims, Adj. hrg. on specifications of objections to discharge adj. to 2.24.72 at 2:00.
2-24	Adj. objections to claims adj. to 5-1-72 at 10:00, Adj. hrg. on specifications of objectionns to discharge, held & closed.
3-6	Referee signed order authorizing the filing of claims of Dr. Arthur Klein & Leo Klein as timely filed.
5-1-72	Adj. objections to claims adj. to 6-27-72 at 10:00.
5-12-72	Filed Trustee's fifteenth interim report.
6-27-72	Adj. objections to claims held & adj. to 7-18-72 at 10:00.
7/18	Adj. obj. to claims adj. to September 28, 1972 at 10:00.
9- 5-72	Referee signed order authorizing special meeting of creditors, Re: to withdraw specifications of objections to bankrupts discharge. Ret. Sept. 28, 1972 at 10:00.
9-15-72	Mailed 175 notices of Special meeting of creditors, filed MLH Affidavit of mailing. Hrg. Sept. 28, 1972 at 10:00.

ROBERT A. MARTIN 9a 65 B 153 ASH

DOCKET NUMBER

DATE	PROCEEDINGS
-20-72	Filed affidavit in affirmation, re: to withdraw objection to bankrupt's discharge. Ret. 9-28-72 at 10:00.
9-20-72	Filed escrow receipt pursuant to stipulation dated August 9, 1972 contained in affidavit filed 9-20-72.
9-27-72	Filed affidavit objecting to Trustee's application Ret. 9-28-72 at 10:00.
9-27-72	Filed by the Attys. for Jack Rothstein, creditor specifications of objection to bankrupt's discharge. Paid $10.00 to the Clerk of the Court, receipt #14051.
9-27-72	Filed affidavit objecting to Trustee's application by Atty. for Tracon Corp.
9-28-72	Adj. obj. toclaims held & adj. to November 6, 1972 at 11:00, special hearing to withdraw objections to discharge held & closed.
10-10-72	Filed Referee's memorandum, re: Trustee's motion to withdraw specifications of objections to discharge.
11-6-72	Adj. obj. to claims adj. to Nov. 20, 1972 at 11:00
11-20-72	Adj. obj. to claims adj. to Jan. 18, 1973 at 10:30.
1-5-73	Filed trustee's seventeenth interim report.
1-18-73	Adj. objections to claims adj. to 2/13/73 at 11:00.
2-13-73	Adj. objections to claims adj. to 3/19/73 at 10:00.
3-19-73	Adj. obj. to claims closed.
10/5/73	Filed reply memorandum on behalf of bankrupt Re discharge
11-14-73	Filed trustee's seventeenth interim report.
12-3-73	Filed decision on discharge.
2/27/75	Order signed denying DISCHARGE to Bankrupt.

DATE	PROCEEDINGS
3/7/75	Filed Notice of Appeal by Atty's for Bankrupt, re: Order dated 2/27/75 denying Bankrupt's Discharge. Copy sent to Barton Nachamie, Trustee in Bankruptcy, Levy, Levy & Ruback, Atty's for Trustee. Paid $10.00 to the Clerk of the Court.
3/12/75	Mailed 168 notices of ORDER DENYING DISCHARGE. Filed JH affidavit of mailing.
3/24/75	Order signed staying order dated 2/27/75 denying discharge to bankrupt pending the determination of bankrupt's appeal.
7/8/75	Filed Trustee's eithteenth interim report.
7/7/76	Filed N/M by attys for trustee: Re: for an order dismissing the Notice of Appeal dated 3/6/75. etc. Ret: 7/13/76 at 10:30.
7/7/76	Filed designation of the contents for the inclusion in record of appeal, and statement of issues on appeal.
7/9/76	Filed affidavit in opposition by attys for bankrupt re: n/m dated 7/7/76 Ret: 7/13/76 at 10:30.
7/12/76	Filed trustee's designation of additional contents for inclusion in record. of appeal. etc. With affidavit of service.
7/13/76	Mtn to dismiss appeal of 2/26/75 held & CLOSED.. MTN DENIED..MEMO ENDORSED...
7/14/76	MEMO ENDORSED.. MOTION DENIED ON DONDITION BANKRUPT'S APPEAL IS PERFECTED AND PROSECUTED WITHIN 60 DAYS FROM THE DATE HEREOF.
8/21/76	Filed notice that record on appeal , from the order of Judge Lasker has been transmitted to the Clerk of the Court & placed on misc. mtn calendar for hearing on 9/28/76 at 10:30 in Rm. 506. etc.
10/14/76	Received from the clerk of the court notice affirming denial of bankrupt re: Opinion # 45224.
10/18/76	Received from the district court copy of USDJ Edmund L Palmieri's decision re: notice of appeal filed 3/7/75. etc.
11/8/76	Filed copy of order by U.S. D. JUdge Edmund L Palmieri. Re: Denial of discharge.

UNITED STATES COURT OF APPEALS 76-5041
FOR THE SECOND CIRCUIT

DOCKET ENTRIES

Docket entries and notice of appeal (bankrupt)

11-[illegible]-76	Received docket fee
11-[illegible]-76	Bernard Garfield filed Form C, p/s
11-[illegible]-76	Bernard Garfield filed Form D, p/s
11-[illegible]-76	Filed scheduling order #1 (CAMP) PC
12-6-76	Received record (Original papers of district court)
12-7-76	Filed motion for an extension of time to file record, appellant, p/s
12-7-76	Filed scheduling order # 2 (CAMP)
12-7-76	Filed record (Original papers of district court)

BEST COPY AVAILABLE

FIRST MEETING OF CREDITORS

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
(In Bankruptcy)

In the Matter

of

ROBERT A. MARTIN, also known as
R. ALLAN MARTIN, also known as
ROBERT ALLAN MARTIN,

Bankrupt.

No. 65- B-153

United States Court House
Foley Square, New York, N. Y.

August 5, 1968 - 2:20 P.M.

Before:

HON. ASA S. HERZOG

Referee

- - - - -

ADJOURNED FIRST MEETING OF CREDITORS

- - - - -

Appearances:

LEVY, LEVY & RUBACK, ESQS.,
Attorneys for Trustee,
225 Broadway,
New York, New York
BY: GARY BLUM, ESQ., of Counsel.

BEATRICE R. GOTTLIEB
Official Court Reporter
Room 230, United States Courthouse
Foley Square, New York, N. Y. 10007
REctor 2-3933

Appearances: (Continued) 331

AUSTIN GRAHAM, ESQ.,
Attorney for Hertz & Herson,
230 Park Avenue,
New York, New York

LEON I. RADIN & CO.,
Accountants for the Trustee,
BY: SYDNEY C. LAUTT, C.P.A.

ANDREW E. KUCHINSKY, ESQ.,
Attorney for Bankrupt,
233 Broadway,
New York, New York

- - - - -

MR. BLUM: If I understand it, your Honor, Mr. Ruback is in charge of this matter and he is on vacation until tomorrow. Until we finish with the examination of the accountant, we still do not know what books and records they have or they turned back.

One of the issues involved in this proceeding is the books and records of the bankrupt and whether they fairly depict --

THE REFEREE: Why wasn't this gentleman told what records you wanted?

MR. BLUM: If your Honor pleases --

THE REFEREE: Why do you have to tell him now to come back? They are recognized well known accountants. On a telephone call they would have given you anything you asked for.

Is that not right, sir?

MR. BLUM: Well, they did, in a sense. We went up there --

THE REFEREE: I know you did.

MR. BLUM: We went up there.

MR. GRAHAM: We opened up our records to them.

THE REFEREE: Why is it necessary to adjourn it today?

MR. BLUM: Because I still do not know what documents he has concerning the Foundation which would bear upon th ankrupt's books and records.

MR. GRAHAM: If it please your Honor, we opened up our entire files and their accountant came in and they know very well what we have.

MR. BLUM: We felt, your Honor, that we have to have them marked in this proceeding.

THE REFEREE: I am not adjourning any further as far as Mr. Martin is concerned. If you do not want to examine him today I will close the examination.

There comes a point where it becomes harassment. It is not an examination any more, it is now harassment. This man has been examined, examined, and examined, time and again. He may have been a little difficult at times but that has nothing to do with it. He did appear and he was examined. This case is on,

I think, almost four years.

You have had every single opportunity to tear this case apart in little pieces, and this man is dragged back again and again and again. I think this is using the Bankruptcy Court to persecute somebody and I won't permit it.

If your further examination of other witnesses discloses an absolute necessity to examine Mr. Martin, you may make an application to me on notice to Mr. Martin's attorney setting forth what it is you discovered and what it is you want to examine him about that you did not examine him about before, and at that time I will entertain an application to reexamine him further, but until that time the examination is closed.

MR. BLUM: May I ask the Court whether it is the practice of this Court to set a date for hearing specifications now that the examination of Mr. Martin is closed by the Court?

MR. KUCHINSKY: Excuse me, your Honor, they do have -- I do not have the exact date -- but there is an order on file.

THE REFEREE: That is not connected.

MR. BLUM: I was under the impression it remai

open so long as the examination of Mr. Martin was not concluded.

THE REFEREE: It is only if an order is in existence. If that order is about to expire you may make further application and I may grant that although the examination is closed completely, and if you can indicate why you are not prepared to file specifications I might extend it. That has nothing to do with it.

MR. GRAHAM: Do you still need Mr. Cannon?

MR. BLUM: Yes, I need him.

THE REFEREE: He wants him back for that examination.

The adjourned first meeting is marked closed.

(Hearing marked closed.)

- - - - -

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
(In Bankruptcy)

In the Matter

of

ROBERT A. MARTIN, a/k/as
R. ALLAN MARTIN, a/k/as
ROBERT ALLAN MARTIN,

Bankrupt

No. 65-B-153

United States Court House
Foley Square, New York, N. Y.

May 19, 1969 - 2:00 P.M.

Before:

HON. ASA S. HERZOG

Referee

- - - - -

ADJOURNED HEARING ON OBJECTIONS TO DISCHARGE

- - - - -

Appearances:

LEVY, LEVY & RUBACK, Esqs.
Attorneys for Trustee
225 Broadway
New York, New York
By: ROBERT I. RUBACK, Esq., of Counsel

BEATRICE R. GOTTLIEB
Official Court Reporter
Room 230, United States Courthouse
Foley Square, New York, N. Y. 10007
REctor 2-3933

A P P E A R A N C E S (Continued):

BARTON NACHAMIE, Esq.
Trustee
11 West 42nd Street
New York, New York

HOFHEIMER, GARTLIR, HOFHEIMER, GOTTLIEB & GROSS, Esqs.
Attorneys for Bankrupt
61 Broadway
New York, New York
By: BERNARD GARTLIR, Esq., of Counsel

LEON I. RADIN & CO.,
Accountants for the Trustee
By: SIDNEY C. LAUTT, C.P.A.

ALSO PRESENT:

MR. ROBERT A. MARTIN

- - - - -

MR. GARTLIR: Mr. Referee, I have a memorandum I would like to hand up.

MR. RUBACK: May I have a copy, please?

MR. GARTLIR: Yes.

MR. RUBACK: Thank you.

THE REFEREE: All right, let's proceed.

MR. RUBACK: Mr. Lautt, will you take the stand.

MR. NACHAMIE: Your Honor, before the witness starts, I am the trustee in this proceeding and bankrupt counsel served me with a subpoena and I was curious as to how long he would need me here.

MR. GARTLIR: My subpoena was directed to the records in the possession of the trustee, and subject to the convenience of the Court we will not need Mr. Nachamie here. The purpose was to make sure there would be available for the Court the records the trustee has under subpoena.

MR. RUBACK: All the records will very shortly, as soon as I qualify Mr. Lautt, be offered in evidence.

MR. NACHAMIE: Your Honor, may I state all the records I had I turned over to Mr. Lautt. I have nothing further in my physical possession that I know of.

THE REFEREE: Counsel indicates that he will release you.

MR. GARTLIR: Fine, unless you are called as a witness.

MR. NACHAMIE: Fine, if you need me --

MR. GARTLIR: May I add this, your Honor, if the occasion arises --

THE REFEREE: He is the trustee and he will be here.

MR. NACHAMIE: I will be available.

THE REFEREE: I will summon him. He will be

available on telephone call.

MR. NACHAMIE: Certainly.

S I D N E Y C. L A U T T, residing at 2745 Winona Road, Baldwin, New York, called as a witness on behalf of the Trustee, having been first duly sworn by the Referee, was examined and testified as follows:

THE REFEREE: I am going to give you a difficult task, Mr. Ruback. I want you to indicate to me what specification you are proceeding on each time and complete it.

MR. RUBACK: Yes, your Honor.

THE REFEREE: So that I won't have to read the record later on and try to decide what specification you were aiming at, or thrusting at.

MR. RUBACK: The initial thrust of my examination at the outset, your Honor, will be as to the failure of the bankrupt to keep proper books and records.

THE REFEREE: That would be specifications 1 and 2?

MR. GARTLIR: 1 and 2, your Honor.

THE REFEREE: That is what I thought. Specifications 1 and 2, is that correct?

MR. RUBACK: That's right, your Honor.

THE REFEREE: When you are through with specifications 1 and 2 I would like you to indicate it and let cross examination proceed at that time on those specifications. We will try to complete each specification as we proceed unless they are so completely joined that the testimony will apply to two or more.

MR. RUBACK: I should indicate at this time, your Honor, that they will be joined in various parts.

THE REFEREE: You will have to indicate it as we go along.

Now we are proceeding on 1 and 2, failed to keep and failed to preserve books and records of account.

MR. GARTLIR: If your Honor pleases, from which the financial condition and business transactions might be ascertained, which is the language of the statute.

THE REFEREE: Are you assuming I do not know the language of the statute?

MR. GARTLIR: I was referring to Mr. Ruback's statement.

THE REFEREE: If he just fails to prove books and records which have no connection with financial condition I would entertain a motion to dismiss them. So let him worry about what he has to prove.

Now, let's get going.

DIRECT EXAMINATION

BY MR. RUBACK:

Q Mr. Lautt, are you a member of the firm of Leon I. Radin & Co.?

A I am.

Q Are you personally a Certified Public Accountant?

A I am.

Q And was your firm retained by the trustee in this proceeding?

A It was.

Q Are you familiar with this type of insolvency proceedings, namely, bankruptcy proceedings?

A I am.

Q How long have you been engaged as accountants for trustees?

A In excess of 25 years.

Q Have you at the request of the trustee examined the books and records of the bankrupt which were turned over to the trustee, or the trustee's counsel, or the

trustee's accountants, or any other representative of the trustee?

A I have.

Q Are those books and records which you have examined in court today?

A They are.

Q Mr. Lautt, this envelope which you have handed me contains what records of the bankrupt?

A It contains bank statements, cancelled checks, duplicate deposit slips, on his account with the Irving Trust Company that were turned over to the trustee or his representative.

MR. RUBACK: Your Honor, with the permission of counsel, I would like to offer them as one exhibit for the purpose of facilitating time, or if necessary we can take them page by page, whichever you and counsel may prefer.

THE REFEREE: Show it to counsel.

MR. GARTLIR: May I just on voir dire, if your Honor please?

THE REFEREE: Yes.

MR. GARTLIR: Did I understand you to say, Mr. Lautt, that these are all the records that were turned over that you have with you today?

THE WITNESS: No.

MR. GARTLIR: Do I understand you to say that you do not have all the records that were turned over to you?

THE WITNESS: No.

MR. GARTLIR: Where are all the records?

THE WITNESS: Here.

MR. GARTLIR: Let me see if I make myself perfectly clear.

Are you telling this Referee that all the records that were turned over to you or made available to you are in this courtroom today?

THE WITNESS: All the records of the bankrupt?

MR. GARTLIR: Of course, of the bankrupt.

THE WITNESS: Yes.

MR. GARTLIR: I have no objection to this piece of it going in if this is the gentleman's testimony.

THE REFEREE: Mark the envelope. Mark the envelope containing the bank statements and cancelled checks and duplicate deposit slips of the Irving Trust Company.

Is that correct, Mr. Witness?

THE WITNESS: That is correct.

(Envelope containing bank statements, cancelled checks and duplicate deposit slips of the Irving Trust Company marked in evidence as Trustee's Exhibit 1 of today's date.)

THE REFEREE: Next question, please.

DIRECT EXAMINATION

CONTINUED BY MR. RUBACK:

Q What have you now?

A I have here in this envelope all of the checks, bank statements, duplicate deposit slips covering the bankrupt account at the American Trust Company.

MR. RUBACK: I offer same as one exhibit.

MR. GARTLIR: You want me to take it out of the sealed envelope, I assume?

MR. RUBACK: Yes.

(Envelope examined by Mr. Gartlir.)

MR. GARTLIR: No objection.

MR. RUBACK: I offer this as one exhibit.

THE REFEREE: Mark it.

(Envelope containing the bank statements, checks, duplicate deposit tickets covering the bankrupt account at the American Trust Company marked in evidence as Trustee's Exhibit 2 of today's date.)

Q Any others?

A Yes, this is the envelope for the same records on his account with the Chase Manhattan Bank.

MR. GARTLIR: May we have the years specifically, please, Mr. Referee?

THE REFEREE: Can you give us the years on this last one, please?

THE WITNESS: Yes. 1963 only.

MR. GARTLIR: 1963, did I understand you to say?

THE WITNESS: That is right.

MR. RUBACK: I offer this as one exhibit, your Honor. (Handing same to Mr. Gartlir)

MR. GARTLIR: No objection.

(Envelope containing the records with reference to the Chase Manhattan Bank marked in evidence as Trustee's Exhibit 3 of today's date.)

THE WITNESS: This is the same for the Chemical Bank & Trust Company.

MR. GARTLIR: What year, please?

THE WITNESS: Well, it covers part of 1961 and part of 1963.

MR. GARTLIR: No objection.

THE REFEREE: Mark it.

(Envelope containing the records with reference to the Chemical Bank & Trust Company marked in

evidence as Trustee's Exhibit 4 of today's date.)

MR. GARTLIR: May we to save time, your Honor, let this witness testify seriatim as to what he has there, and he can look at them all at once and be done with it, at least what he has before him on the table.

THE REFEREE: That is all right with me but I won't interfere with counsel.

MR. RUBACK: Let me just consult with Mr. Lautt.

THE REFEREE: Off the record.

(Discussion held off the record.)

THE WITNESS: The same on the Marine Midland Trust Company.

THE REFEREE: We will go the way we were going. Show it to counsel.

What is the year for the Marine Midland?

THE WITNESS: 1961.

When I mention the year I want to say I do not mean to imply that I have a full and complete year. They are dated 1961 and they are not necessarily complete for that year.

THE REFEREE: All right. Show that one to counsel.

MR. GARTLIR: No objection.

(Envelope containing cancelled checks, bank statements and duplicate deposit slips with reference to the Marine Midland Trust Company marked in evidence as Trustee's Exhibit 5 of today's date.)

THE WITNESS: Federation Bank & Trust Company, 1964.

THE REFEREE: That will be Exhibit 6, is that right?

MR. BUBACK: Yes.

(Same is handed to Mr. Gartlir.)

THE REFEREE: Mark it.

(Envelope containing checks, bank statements and duplicate deposit tickets for the Federation Bank & Trust Company marked in evidence as Trustee's Exhibit 6 of today's date.)

THE WITNESS: Hanover Bank, 1960.

(Same is handed to Mr. Gartlir.)

THE REFEREE: Mark it Exhibit 7.

(Envelope containing documents referring to the Hanover Bank marked in evidence as Trustee's Exhibit 7 of today's date.)

THE WITNESS: National State Bank of Newark, 1964.

(Same is handed to Mr. Gartlir.)

THE REFEREE: Mark that as Trustee's Exhibit 8.

(Envelope referring to the National State Bank of Newark marked in evidence as Trustee's Exhibit 8 of today's date.)

THE WITNESS: National Newark & Essex Bank, 1964-1965.

(Same is handed to Mr. Gartlir.)

THE REFEREE: Mark it as Trustee's Exhibit 9.

(Envelope containing documents with reference to the National Newark & Essex Bank marked in evidence as Trustee's Exhibit 9 of today's date.)

THE WITNESS: First National City Bank, 1963 and 1964.

(Same is handed to Mr. Gartlir.)

THE REFEREE: Mark it.

(Envelope containing documents with reference to the National City Bank referred to marked in evidence as Trustee's Exhibit 10 of today's date.)

THE WITNESS: Kings County Trust Company, 1960, 1961, 1962.

(Same is handed to Mr. Gartlir.)

THE REFEREE: Mark it.

(Envelope containing documents with reference to the Kings County Trust Company marked in evidence

as Trustee's Exhibit 11 of today's date.)

THE WITNESS: Trade Bank & Trust Company, 1961 and 1962.

(Same is handed to Mr. Gartlir.)

THE REFEREE: Mark it.

(Envelope with reference to the Trade Bank & Trust Company marked in evidence as Trustee's Exhibit 12 of today's date.)

THE WITNESS: Manufacturers Hanover, 1964.

(Same is handed to Mr. Gartlir.)

THE REFEREE: Mark it.

(Envelope containing documents with reference to the Manufacturers Hanover Trust Company marked in evidence as Trustee's Exhibit 13 of today's date.)

THE WITNESS: The Royal State Bank, 1962, 1963.

(Same is handed to Mr. Gartlir.)

THE REFEREE: Mark it as Exhibit 14.

(Envelope containing documents with reference to the Royal State Bank marked in evidence as Trustee's Exhibit 14 of today's date.)

THE WITNESS: A package of miscellaneous money orders.

(Same is handed to Mr. Gartlir.)

DIRECT EXAMINATION

CONTINUED BY MR. RUBACK:

Q Mr. Lautt, this package of miscellaneous money orders is contained in an envelope bearing the years 1963, 1964 and 1965. Is this the envelope which you received?

A Yes.

THE REFEREE: Mark it.

(Envelope containing miscellaneous money orders referred to marked in evidence as Trustee's Exhibit 15 of today's date.)

THE WITNESS: A package of brokerage statements and confirmations of trades covering the account of Ira Sussman.

(Same is handed to Mr. Gartlir.)

THE REFEREE: Mark it No. 16.

(Package of brokerage statements and confirmations of trades covering the account of Ira Sussman marked in evidence as Trustee's Exhibit 16 of today's date.)

THE WITNESS: The same assortment of papers covering the account of Leo Klein Roth.

(Same is handed to Mr. Gartlir.)

THE REFEREE: Mark it 17.

(Envelope containing assortment of papers

covering the account of Leo Klein Roth marked in evidence as Trustee's Exhibit 17 of today's date.)

THE WITNESS: A folder of credit and debit slips on the account of Robert A. Martin with the Tracon Corp. bearing the date 1960.

MR. GARTLIR: Mr. Referee, may I?

THE REFEREE: Yes.

MR. GARTLIR: On this one, isn't it a fact that this also pertains to the year 1961 in part, the second page, top exhibit?

THE WITNESS: Let me take a look at it. (Witness examines same) Oh, yes, there was January 1961 there too.

MR. GARTLIR: Okay.

(Folder of debit and credit slips on the account of Robert A. Martin with the Tracon Corp. referred to marked in evidence as Trustee's Exhibit 18 of today's date.)

THE WITNESS: These are debit and credit slips showing transactions of the bankrupt with the Tracon Corp. dated 1961.

(Same are handed to Mr. Gartlir.)

THE REFEREE: Mark them.

(Folder containing debit and credit slips of

transactions of the bankrupt with the Tracon Corp. referred to marked in evidence as Trustee's Exhibit 19 of today's date.)

THE WITNESS: A folder of debit and credit slips covering the account of the bankrupt with the Tracon Corp. dated 1962.

(Same are handed to Mr. Gartlir.)

THE REFEREE: Mark it.

(Folder of debit and credit slips of the bankrupt's account with the Tracon Corp. dated 1962 marked in evidence as Trustee's Exhibit 20 of today's date.)

THE WITNESS: These are trading slips of the bankrupt covering the year 1962.

THE REFEREE: What are they?

MR. GARTLIR: Trading slips.

THE REFEREE: Mark it.

(Package of trading slips of the bankrupt covering the year 1962 marked in evidence as Trustee's Exhibit 21 of this date.)

THE WITNESS: This is a package of trading slips for the year 1961. (Same are handed to Mr. Gartlir.)

MR. GARTLIR: May I have the witness' answer?

(Last answer of witness read by Reporter.)

THE REFEREE: Mark it.

(Package of trading slips for the year 1961 marked in evidence as Trustee's Exhibit 22 of today's date.)

THE WITNESS: This is a package containing trading slips of the bankrupt dated 1962 and brokerage statements on the account of Arthur Sonnenschein, and credit and debit slips, apparently covering the account of a Mr. Vernon Towers with the Tracon Corp., and some trading slips covering stock transactions of Mr. Vernon Towers.

Q Are all of these contained in the original package which was submitted by the bankrupt?

A Yes.

(Package handed to Mr. Gartlir.)

THE REFEREE: Mark it.

(Package containing trading slips of the bankrupt dated 1962 and brokerage statements of the account of Arthur Sonnenschein, and debit and credit slips covering the account of a Mr. Vernon Towers with the Tracon Corp., etc., marked in evidence as Trustee's Exhibit 23 of today's date.)

THE WITNESS: One file containing a statement of

the account of Robert F. Martin with the Granbery, Marache & Co., Inc. for September 1962.

(Same is handed to Mr. Gartlir.)

THE REFEREE: Mark it.

(File containing statement of the account of Robert F. Martin with Granbery, Marache & Co., Inc., for September 1962 marked in evidence as Trustee's Exhibit 24 of today's date.)

THE WITNESS: A folder of papers captioned "Dividend take-offs 1962".

(Same handed to Mr. Gartlir.)

THE REFEREE: Mark it.

(Folder of papers captioned "Dividend take-offs 1962" marked in evidence as Trustee's Exhibit 25 of today's date.)

THE WITNESS: I want to add as to this last group of papers, dividend take-offs, I cannot determine whether it is a record of the bankrupt or of somebody else, of Robert A. Martin Associates, Inc.

A folder entitled "Dividend take-offs 1961", and my explanation also carries forth as to this one. I cannot determine whether they are the bankrupt's records or not.

(Same is handed to Mr. Gartlir.)

THE REFEREE: Mark it.

(Folder entitled "Dividend take-offs 1961" marked in evidence as Trustee's Exhibit 26 of today's date.)

THE WITNESS: Trading slips dated 1959.

(Same are handed to Mr. Gartlir.)

THE REFEREE: Mark that.

(Trading slips dated 1959 referred to marked in evidence as Trustee's Exhibit 27 of today's date.)

THE WITNESS: An account current of the bankrupt with the Tracon Corp. called clearing account covering period March 8, 1961 through January 31, 1962.

(Same is handed to Mr. Gartlir.)

(Account current of the bankrupt with the Tracon Corp. called clearing account covering period March 8, 1961 through January 31, 1962, marked in evidence as Trustee's Exhibit 28 of today's date.)

THE WITNESS: The running of an account of Robert A. Martin with the Tracon Corp. covering the period July 1, 1960 through January 9, 1962.

(Same is handed to Mr. Gartlir.)

THE REFEREE: Mark it.

(Running of an account of Robert A. Martin with the Tracon Corp. for the period July 1, 1960 through

January 9, 1962 marked in evidence as Trustee's Exhibit 20 of today's date.)

MR. RUBACK: Your Honor, I would like the record to note that we do have a number of other records which were turned over to us by the bankrupt but which relate to third parties, and I want this clear in case there are any questions as to the fact that we have them in our possession, and should they become necessary to either our case or to the bankrupt's case we will, of course, submit them to the Court.

Now, your Honor, I have with me a transcript of a statement of the account of the bankrupt with the Bankers Trust Company. This statement was furnished to me a number of months ago and I did subpoena the Bankers Trust Company prior to this trial so that a representative could identify this account which has never been marked in evidence heretofore.

Unfortunately, I am advised that they cannot have a representative here today and were checking out the proper man.

I should like to offer it in evidence at this time subject to connection, of course, when I

produce a witness from the Bankers Trust Company to indicate that this a true and correct transcript of the account of Robert Martin with the Bankers Trust Company, bearing account No. 30611929.

MR. GARTLIR: Let me see it. Maybe I will consent to it.

(Same is handed to Mr. Gartlir.)

MR. GARTLIR: I will stipulate that this is a record of a copy of the Bankers Trust Company account with Robert Martin.

THE REFEREE: Mark it.

MR. GARTLIR: May we have the year identified?

MR. RUBACK: I am looking for it. Let the record further indicate that this transcript is for the period June 26, 1963 to January 20, 1964.

THE REFEREE: What bank is it?

MR. RUBACK: The Bankers Trust Company.

THE REFEREE: Mark it.

(Copy of the transcript of the account of the bankrupt with the Bankers Trust Company for the period June 26, 1963 to January 20, 1964 marked in evidence as Trustee's Exhibit 30 of today's date.)

MR. RUBACK: Do I understand from counsel's stipulation that he will concede that this is a true

and correct copy and it is not necessary to produce a witness from the Bankers Trust Company?

THE REFEREE: He did not say that.

MR. GARTLIR: So that there will be no misunderstanding I will take the position that this is truly an account of Robert A. Martin Associates, Inc. and the records in the possession of the trustee and his accountant will so indicate.

MR. RUBACK: You say Robert A. Martin Associates?

MR. GARTLIR: That's right. I am conceding that, however, as a copy of an account in the name of Robert A. Martin, held with the Bankers Trust Company.

THE REFEREE: Now you have me all confused. The account in the name of Robert A. Martin?

MR. GARTLIR: That's right, your Honor.

THE REFEREE: What you are saying is that it actually is an account of Robert A. Martin Company?

MR. GARTLIR: That is correct. That is what we contend and what we will show.

We will concede that this is the physical record of that account and you do not have to bring anyone to further identify it for that purpose.

THE REFEREE: We will recess now until

3:30 o'clock p.m.

(Recess taken at 3:25 o'clock p.m. and hearing resumed at 3:35 o'clock p.m.)

THE REFEREE: All right, next question.

MR. RUBACK: Your Honor, may I have the schedules and statement of affairs from the file?

THE REFEREE: I do not have it. Do you want me to send for them?

Off the record.

(Discussion held off the record.)

MR. RUBACK: Also, your Honor, the amendment to the statement of affairs which is August 30, 1966.

THE REFEREE: Are we now waiting for those schedules?

MR. RUBACK: Yes, but I would be willing to proceed in the interim.

THE REFEREE: Let's proceed.

MR. RUBACK: Your Honor, I should like to have deemed marked in evidence the schedules in bankruptcy filed by the bankrupt and the oath thereto.

THE REFEREE: That will be deemed marked in evidence as Trustee's Exhibit 31.

(Schedules in bankruptcy deemed marked in evidence as Trustee's Exhibit 31 of today's date.)

MR. RUBACK: Your Honor, at this time I should like to read into the record Schedule B-6 of the schedules in bankruptcy, which reads as follows:

"Books: (1) Checks, (2) some correspondence, (3) brokerage slips, (4) bills, (5) copies of lawsuits, (6) income tax returns accounts."

Your Honor, I should like to have deemed marked in evidence the statement of affairs of the bankrupt and the oath thereto dated March 1, 1965.

THE REFEREE: All right, it will be deemed marked in evidence as Trustee's Exhibit 32.

(Statement of affairs and oath thereto, dated March 1, 1965 deemed marked in evidence as Trustee's Exhibit 32 of today's date.)

MR. RUBACK: I should like to read into the record at this time question No. 5 of the statement of affairs --

MR. GARTLIR: If your Honor pleases, is it necessary to read it since this is in evidence? Does he have to read it into the record?

THE REFEREE: There is no jury here. Let's see what he is interested in, without comment. Just read it.

MR. RUBACK: Books and records: (a) Have you

kept books of account or records relating to your affairs within the two years immediately preceding the filing of your original petition herein?

"Answer - Yes.

"(b) In whose possession are those books or records?

"Answer - Hertz & Herzon, 2 Park Avenue, New York City, New York, Tracon Corp., 60 East 42nd Street, New York City, New York, Century Industries at 1450 Broadway, New York City, New York.

"(c) Have you destroyed any books of account or records relating to your affairs within two years immediately preceding the filing of the original petition herein?

"Answer - No."

Now, I would like deemed marked in evidence the statement of affairs and the oath thereto originally dated August 30, 1966 and subsequently changed to September 8, 1966.

THE REFEREE: You have one set of the statement of affairs in evidence.

MR. RUBACK: This is the second.

THE REFEREE: Was there an amendment?

MR. RUBACK: It was an amendment.

THE REFEREE: Show it to counsel. Are you familiar with it?

MR. GARTLIR: Yes, but I will look at it, if I may.

(Same is handed to Mr. Gartlir.)

THE REFEREE: That will be deemed marked in evidence as Trustee's Exhibit 33.

(Statement of affairs and oath originally dated August 30, 1966 and subsequently changed to September 8, 1966 deemed marked in evidence as Trustee's Exhibit 33 of today's date.)

MR. GARTLIR: Your Honor, this is a paper on file.

THE REFEREE: I said it is deemed marked in evidence. I cannot say the whole file is in evidence because we always have to consider it may go up on review, so he has to designate what he wants in the record.

MR. RUBACK: I should like to read into the record the questions and answers of Item 2 of the statement of affairs which has been marked as Exhibit 33 --

THE REFEREE: Counsel is correct, you do not have to read it to me. You can point it out to me

in your brief when you are through, but I have no objection if you feel impelled to read it. If you feel it will help me to understand the case as it progresses, you go right ahead and read it without comment.

MR. RUBACK: I should like to read the following into the record:

"(a) By whom or under whose supervision have your books and records been kept within the two years immediately preceding the filing of the original petition herein?

"Answer - Under the bankruptcy provision and Hertz & Herzon, Certified Public Accountants, 2 Park Avenue, New York, New York.

"(b) By whom have your books of accounts and records been audited during the two years immediately preceding the filing of the original petition herein?

"Answer - No one.

"(c) In whose possession are your books of account and records?

"Answer - See rider."

And the rider reads as follows:

"At the time of the filing of the petition the bankrupt's books of account and records were in

the possession of Hertz & Herzon, Certified Public Accountants, 2 Park Avenue, New York, New York, Tracon Corp., 60 East 42nd Street, New York, New York, Center Industries, 1450 Broadway, New York, New York.

"All of these books and records have been turned over to Barton Nachamie, the trustee in bankruptcy."

Now, your Honor, I should like a concession from counsel at this time that the statement of affairs to which I have referred in trustee's specifications of objections is dated August 30, 1966 are one and the same with the original of this statement of affairs wherein the date August 30, 1966 has been stricken and the date September 8, 1966 has been added.

MR. GARTLIR: You mean is this an error on the papers?

MR. RUBACK: Sir, I don't know who did it. (Handing same to counsel)

MR. GARTLIR: I don't understand the request being made.

MR. RUBACK: The copy delivered to the trustee in bankruptcy, your Honor, was dated August 30, 1966.

THE REFER E: I do not understand what you are asking.

MR.RUBACK: I am asking that the copy which the trustee has in his possession dated August 30, 1966 be deemed dated September 8, 1966, and wherever the specifications refer to a statement of affairs dated August 30, 1966 that they will be deemed dated September 8, 1966 so there will be no technical objection.

THE REFEREE: Let me get this straight. They had to file three copies of it and apparently the dates were different on the copies filed, is that right?

MR. RUBACK: Correct.

MR. GARTLIR: No, Mr. Referee. Obviously what happened is that this was prepared on the 30th of August and was verified on September 8th and filed, and apparently at the request of the trustee when they asked for a copy of the papers they sent him a copy containing the typewritten original date of August 30th. I can't see where there is anything other than that.

THE REFEREE: Is that where you got your copy?

MR. RUBACK: I got my copy from the attorney for

the bankrupt.

MR. GARTLIR: That is the answer.

THE REFEREE: Then this is the document that he referred to in his papers.

MR. GARTLIR: Anyone can look at it.

THE REFEREE: He is saying this, counsel, in his specifications --

MR. GARTLIR: Yes, I will concede the paper he refers to is the paper on file.

THE REFEREE: What is this exhibit?

MR. RUBACK: This is Exhibit 33.

MR. GARTLIR: We concede that the paper you refer to in your specifications throughout as dated August 30th is in fact a copy of the paper on file which is in fact verified September 8th, and I do so concede.

DIRECT EXAMINATION

CONTINUED BY MR. RUBACK:

Q Mr. Lautt, have you examined the books and records of the bankrupt which have been placed in evidence for the year 1960?

A I have.

Q Did you examine any check books of the bankrupt for the year 1960?

A No, because none were received.

MR.GARTLIR: Objected to and I move to strike out the answer beginning with "No, because" --

THE REFEREE: Objection sustained.

Q Did you receive any check books of the bankrupt?

A I did not.

THE REFEREE: For what period?

MR.RUBACK: For the year 1960.

THE WITNESS: I did not.

Q Did you receive any ledgers of the bankrupt for the year 1960?

A I did not.

Q Did you receive any records of the bankrupt for the year 1960 other than those which were placed in evidence today?

A I did not.

Q What did you do in connection with your examination of the available cancelled checks, bank statements and duplicate deposit slips of the bankrupt for the year 1960, all of which were heretofore marked in evidence today?

A I went through all of the cancelled checks in my possession and began tabulating them, showing the dates of the checks, the check numbers, the amounts and the payees.

Where the checks were issued to department stores, supermarkets and the like, I did not tabulate them on my work sheets since I considered them to be spent in connection with the bankrupt's living expenses.

However, as to the others I proceeded along the line that I indicated as far as his disbursements were concerned.

Q Now, do you know the grand total of all checks issued by the bankrupt during the year 1960 which you have examined?

A The total of checks I examined which were made available to me for the year 1960 totalled $413,319.99.

THE REFEREE: And these are exclusive of the checks that you thought were living bills?

THE WITNESS: That's right, sir.

Q Were you able to determine from you examination the nature and purpose of the disbursements indicated by these checks?

A I could not determine the nature of disbursements of checks during this period in the amount of $362,107.20.

Q Now, of this total of $362,107.20 for which you could not identify the nature or purpose, how much was attributable to checks issued for cash?

A $46,813.15.

Q Now, of this total of $362,107.20 what was the amount of checks issued to the bankrupt and cashed by him?

A $20,800.

MR. GARTLIR: If your Honor please, I am not sure I understand the question. Issued to the bankrupt -- I think that was the question and I do not believe it was clear. May I have the question read back, please?

THE REFEREE: Read it back.

MR. RUBACK: I will reframe it.

Q Of the total of $362,107.20 what total of checks were issued to the bankrupt as payee and cashed by him?

A $20,800.

Q What did you do in connection with your examination of the available cancelled checks and bank statements of the bankrupt for the year 1961, which records have heretofore been marked in evidence today?

A Essentially I went through the same process in tabulating these checks on each of his accounts by the date, check number, amount and payee, and setting aside those checks which I thought were personal living expenses.

THE REFEREE: How did you determine personal living expenses?

THE WITNESS: Eventually I did not tabulate, again, checks of department stores and supermarkets.

THE REFEREE: How about rent?

THE WITNESS: Rent also.

THE REFEREE: All right.

Q What was the grand total of all checks according to the books and records which have been marked in evidence today which was examined by you and issued by the bankrupt during the year 1961?

A $1,379,625.61.

Q Is that total inclusive of the checks issued by the bankrupt for personal expenses?

A It is.

Q Were you able to determine the nature and purpose of the disbursements indicated by this $1 million plus in checks?

A I was to the extent of $308,164.30, leaving a balance of unidentifiable disbursements as to nature and type to the extent of $1,071,461.31.

I wish to add in connection with this examination for the year 1961 on the account of the Irving Trust Company, of which I apparently had a complete transcript of the account among the bankrupt's records, we could not find among the bankrupt's records cancelled checks

totalling $232,829, and debit memo tickets reflected in this account to the extent of $25,004.08.

Q Of this total of $1,071,461.31, how much was attributable to checks issued to cash?

MR. GARTLIR: Objection, and I also wil object to the previous testimony regarding this particular question as not within the scope of the specifications. The charge being made by the trustee here is that the bankrupt did not keep books and records from which his affairs could be ascertained, and there is no question made yet before the Court as to what the purpose was for which these checks were, even if they were drawn to cash and cashed by him.

THE REFEREE: Objection overruled.

MR. RUBACK: Is there an open question?

THE REFEREE: Yes.

MR. RUBACK: Will you please read the question.

(Pending question read by Reporter.)

A $56,581.16.

Q Of this $1,071,461.31 how much was attributable to checks issued to the bankrupt as payee and cashed by him?

MR. GARTLIR: May I have that question clarified, if the Referee please, because it was a two-edged

question -- payable to the bankrupt and cashed by him. I would like to know --

THE REFEREE: He wants to know the aggregate of checks in which the bankrupt was the payee and which he cashed.

MR. GARTLIR: Do I understand the clarification to that question is that there is a difference between made payable to him and cashed and made payable to him and deposited for some other purpose? I should like to have that clarified.

THE REFEREE: He said cashed. Cashed to me means that you go to a bank and turn it into cash.

MR. GARTLIR: Okay.

A There were now .

Q Did you make a similar tabulation of the available cancelled checks and bank statements heretofore marked in evidence of the bankrupt for the year 1962?

A Yes.

Q What was the grand total of all checks issued by the bankrupt for the year 1962 which you examined?

A $1,131,492.15.

Q Were you able to determine the nature and purpose of the disbursements indicated by these checks which totalled $1,131,492.15?

A To the extent of $451,791.01 leaving a balance which I could not determine the nature or purpose of the payments in the amount of $729,701.14.

Q Now, of this unidentifiable total of $729,701.14 what was the aggregate of the checks issued to cash?

A $25,546.95.

Q Were there any checks issued to the bankrupt as payee and cashed by him of this $729,701.14?

A None.

Q Now, did you make a similar tabulation of checks from the available books and records heretofore marked in evidence which you examined for the year 1963?

A Yes, I did.

Q What was the grand total of all the checks issued by the bankrupt for the year 1963 which you examined from these records which have been marked in evidence?

A As of this year 1963 the total of checks which I had covered two accounts, the Chase Manhattan Bank and the First National City Bank and they totalled $9,478.71.

However, in my tabulation I have added $148,033.47 covering disbursements made on the Bankers Trust Company on which we have a transcript, I believe, marked in evidence, and for which I have no checks at all, making a

total of the three banks of $157,512.18.

Q Now, of this total of checks for the year 1963 can you determine --

THE REFEREE: You said two banks --

MR. RUBACK: I withdraw the question.

THE REFEREE: You said the Chase and the National City had aggregated some nine thousand dollars.

THE WITNESS: Yes, sir.

THE REFEREE: The other bank you have no checks?

THE WITNESS: That's right.

THE REFEREE: So now we are just talking about the nine thousand.

THE WITNESS: Yes.

THE REFEREE: All right, go ahead.

Q Of the $9,473.71 of checks, can you determine the nature and purpose --

A From the checks themselves I could not determine the nature and purpose of these disbursements.

Q Can you tell me the aggregate of these checks issued to the bankrupt as payee and cashed by him?

A None.

Q Do I understand from your testimony that you cannot identify this excess of $148,000 of checks issued through the Bankers Trust Company account since you did not

receive the cancelled vouchers or checks?

A That is right.

Q Did you make a similar tabulation of the checks issued by the bankrupt for the year 1964 from the books and records which have been marked in evidence?

A I did.

Q Can you give me the grand total of all checks issued by the bankrupt during 1964 which you examined?

MR. GARTLIR: Just for clarification, if I may, Mr. Referee, the question is somewhat different than the question put for the prior years.

THE REFEREE: I did not hear you.

MR. GARTLIR: As I understood the question put for the prior years they related only to checks. The question now is addressed to all books and records. Do I understand that to be different --

MR. RUBACK: I will withdraw my question.

Q Did you make a similar tabulation for the year 1964 from the available cancelled checks and bank statements which have been marked in evidence?

A Yes.

Q Can you give me the grand total of the checks issued by the bankrupt during the year 1964 which you have examined?

A $11,438.25.

Q And were you able to determine the nature and purpose of the disbursements indicated by these checks totalling $11,438.25?

A Not entirely. I was able to determine checks to the extent of $844.15 leaving a balance which I could not identify as to the nature and purpose to the extent of $10,594.10.

Q Will you tell me the aggregate of these checks which were issued to cash, if any?

A $4,093.08.

Q Can you tell me the aggregate of all of these checks which were issued to the bankrupt as payee and cashed by him?

A No.

Q Did you make a similar tabulation from the available cancelled checks and bank statements of the bankrupt which have been put into evidence today for the period January 1, 1965 to March 1, 1965, the date of the petition in bankruptcy herein?

A I did.

Q Can you give me the grand total of all checks issued by the bankrupt during this period in 1965?

A $410.53.

Q Can you identify the nature or purpose of these checks?

A To the extent of $100.35 leaving a balance of $310.18 which I could not identify.

Q Can you give me the total of all the checks issued by the bankrupt during the period January 1, 1960 to March 1, 1965, according to the available checks and bank statements marked in evidence today, for which you cannot determine the nature or purpose?

A $2,331,578.41.

MR. RUBACK: If your Honor please, at this time it was my purpose to start examining Mr. Lautt relative to the deposits made by the bankrupt during each of the years which I have just alluded to in connection with the checks, but he advises me through inadvertence he left the work sheets at home. He had been working on this over the week-end and so since it is four o'clock, or after four, I would suggest an adjournment at this time and I will then continue with my examination of Mr. Lautt with respect to these deposits and continue thereafter at such time as your Honor can give me.

MR. GARTLIR: If he is not completed on this

particular branch of the case I hope the adjournment will be short.

THE REFEREE: Off the record.

(Discussion held off the record.)

THE REFEREE: Monday, May 26th at two o'clock and I will hold the afternoon.

(Witness excused.)

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(Adjournment taken to May 26, 1969 at two o'clock p.m.)

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
(In Bankruptcy)

In the Matter

of

ROBERT A. MARTIN, a/k/as
R. ALLAN MARTIN, a/k/as
ROBERT ALLAN MARTIN,

Bankrupt

No. 65-B-153

United States Court House
Foley Square, New York, N. Y.

May 26, 1969 - 2:25 P.M.

Before:

HON. ASA S. HERZOG

Referee

- - - - -

CONTINUED HEARING ON OBJECTIONS TO DISCHARGE

- - - - -

Appearances:

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BG/r

A P P E A R A N C E S (Continued):

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LEON I. RADIN & CO.,
Accountants for the Trustee
By: SIDNEY C. LAUTT, C.P.A.

ALSO PRESENT:

MR. ROBERT A. MARTIN

- - - - -

THE REFEREE: Off the record.

(Discussion held off the record.)

S I D N E Y C. L A U T T, recalled as a witness by the Trustee, having been previously duly sworn by the Referee, was examined and testified further as follows:

MR. RUBACK: Your Honor, following the last meeting we found that two advice of charges slips from the Bank of Bellwood were not offered in evidence and I would like to offer them at this time as one exhibit. (Handing same to Mr. Gartlir.)

MR. GARTLIR: May I address a question to Mr. Lautt?

THE REFEREE: Yes.

MR. GARTLIR: Do I understand you to say, Mr. Lautt, that these are records which you had but did not discover at the last meeting or have you since come into possession of them?

THE WITNESS: No, I had them all the time. I had them in my work papers.

MR. GARTLIR: Then what I have said is that you had them all along --

THE WITNESS: Yes, I had them all along but I did not realize that they were not offered into evidence.

MR. GARTLIR: These are part of the records of the bankrupt that you testified you received in one way or another?

THE WITNESS: That's right.

MR. GARTLIR: I have no objection.

THE REFEREE: How are they described, please?

MR. RUBACK: Bank of Bellwood advice of charges.

THE REFEREE: Mark them.

(Two Bank of Bellwood advice of charges referred to marked in evidence as Trustee's Exhibits 34-A and 34-B of this date.)

THE REFEREE: Let's go ahead.

DIRECT EXAMINATION

BY MR. RUBACK CONTINUED:

Q Mr. Lautt, did you compute the total deposits made by the bankrupt during the year 1960 from the bank statements, duplicate deposit tickets and cancelled checks which have been placed in evidence at this trial?

A I have.

Q What is the grand total of these deposits for the year 1960?

MR. GARTLIR: May I have just one clarification before that answer is given?

Was the question "cancelled checks", is that your question?

THE REFEREE: Why don't we have the question read.

(Pending question read by Reporter.)

MR. GARTLIR: The only evidence in the trial of cancelled checks are checks drawn by the bankrupt. I do not understand how that will relate to deposits.

MR. RUBACK: I will clarify it.

MR. GARTLIR: If you will, please.

Q Mr. Lautt, will you please advise this court the reason for your taking into consideration the cancelled checks of the bankrupt which have been placed in

evidence at this trial for the purpose of determining the total deposits which the bankrupt made during the year 1960?

A There are instances where I do not have bank statements on some of his accounts but I do have cancelled checks issued and paid by these banks on the account. I therefore have assumed that there were deposits to cover the clearance of these checks during that year and in my computation of deposits where the situation arises, I had merely taken the total of the paid and cleared checks and added them to the deposits where I did not have bank statements.

MR. GARTLIR: I would have to offer a mild objection. I will let it stand, Mr. Referee, but I do not think it goes to the proof of what was in the account by making assumptions that there must have been deposits to cover a check. I think it goes to the validity of the proof so I will let it go in.

Q What is the grand total of these deposits for the year 1960?

A $437,450.58.

Q Can you determine the nature and source of these deposits which totalled $437,450.58 for the year 1960?

A I can to the extent of $22,979.45.

Q Do I therefore understand that you cannot determine the nature and source of the remaining balance?

A That's right, and that amount is $414,471.13.

Q Did you compute the total deposits made by the bankrupt during the year 1961 from the bank statements, duplicate deposit tickets and cancelled checks which have been placed in evidence?

A You mean duplicate deposit tickets?

Q That's right.

A Yes. I have got that total, $1,518,705.17.

Q Can you determine the nature and source of these deposits which total $1,518,705.17 for the year 1961?

A I have to the extent of $166,307.06.

Q To what extent, therefore, have you not been able to make such determination?

A $1,352,398.11.

Q Now, did you compute the total of deposits made by the bankrupt during the year 1962 from these bank statements, duplicate deposit tickets and cancelled checks?

A Yes, and that total is $1,306,227.93.

Q Can you determine the nature and source of these deposits for the year 1962?

A To the extent of $414,773.62.

Q Did you compute in similar fashion the total deposits --

A Leaving an undetermined amount as to the source and nature of $891,454.31.

THE REFEREE: Would you repeat that figure?

THE WITNESS: $891,454.31.

Q Did you similarly compute these deposits for the year 1963?

A I have, and those deposits total $167,918.15.

Q To what extent were you able to determine the nature and source of these deposits?

A To the extent of $425.

Q Leaving --

A Leaving an undetermined amount as to source and nature of receipts in the sum of $167,493.15.

Q Did you similarly compute these deposits for the year 1964?

A I did, and that total was $15,577.88.

Q To what extent were you unable to determine the nature and source of these deposits for the year 1964?

A To no extent.

Q Did you compute the deposits made by the bankrupt in similar fashion for the period January 1, 1965 to March 4, 1965 the date of the petition in this

proceeding?

A Yes, and that total is $1,731.73.

Q To what extent were you able to determine the nature and source of those deposits?

A To no extent.

MR. GARTLIR: Just a moment, Mr. Referee, I don't quite understand that.

Do I understand from your answer to the last question that you could not ascertain the source of any of those deposits, is that what you said?

THE WITNESS: That's right, the source and nature.

Q Can you give me the total of all deposits for the period January 1, 1960 through March 4, 1965 for which you cannot determine the source or nature of the moneys received from the available books or records of the bankrupt?

A My examination here -- I am testifying as to source and nature, and not source or nature.

Q I will reframe my question.

A I don't know what your previous question was but that is the entire response to the questions of that type and not either.

Q I see.

Can you give me the total, therefore, of all deposits for the period January 1, 1960 through March 4, 1965 for which you cannot determine the source and nature of the moneys received from the available books and records of the bankrupt?

A Yes, and that sum is $2,843,126.31.

Q Have you examined the records submitted by the bankrupt relevant to the Tracon Corporation?

A I have.

Q Have you in connection therewith examined Exhibits 18, 19, 20, 23, 28 and 29?

A Yes.

Q Did you examine the exhibits produced at this trial relevant to the transactions between Tracon Corporation and the bankrupt for the year 1960?

A Not in complete detail but as to certain aspects of these exhibits I have made an examination.

Q Specifically, did you examine Exhibits 18, 19 and 20 which refer to debit and credit slips of Tracon issued to the bankrupt?

A Yes.

Q Now, will you describe the nature of these debit slips?

A Debit slips of Tracon are charges to the bankrupt

either for the passing of cash to him or passing of securities to him. There were charges for interest, charges for handling of the account and items of that nature.

Q Now, in connection with the debit slips which relate to the transfer of cash to the bankrupt, were you able to trace them into the bankrupt's records?

A Not completely.

Q To what extent were you unable to trace these apparent transfers of cash into the bankrupt's records as indicated by the debit slips of Tracon?

A Well, for the year 1960 the sum of such items is $20,000; for the year 1961 the total of such items if $195,200; for the 1962 it is $30,800.

Q Now, were you able to trace these into the bankrupt's records?

A No, that is what I have just testified to.

THE REFEREE: These are the figures he said he could not trace.

Q Could not trace?

A That's right.

Q Now, did these Exhibits 18, 19,20, 23, 28 and 29 indicate payments by the Tracon Corporation to third parties for which the bankrupt was charged by Tracon?

A Yes.

Q What was the extent of these payments?

A Well, for the year 1961 it was 10,000 and for the year 1962 it was 10,000.

MR. GARTLIR: Do we have an omission of 1960 or are you coming to that?

THE WITNESS: No, there are none.

THE REFEREE: There are none?

THE WITNESS: There are none for the year 1960.

MR. GARTLIR: May I have that figure again, 1961, 10,000, 1962 $10,000; do I have that correct?

THE REFEREE: Yes, you are correct.

Then, as I understand it, these represent payments by the Tracon Corporation to third parties for which the bankrupt was charged on the Tracon books. In other words, advances made for the bankrupt, apparently?

THE WITNESS: That's right.

DIRECT EXAMINATION

BY MR. RUBACK CONTINUED:

Q Can you determine from these exhibits, or from any other record of the bankrupt, the nature or purpose of these payments made by Tracon to third parties for which the bankrupt was charged by Tracon?

A I can't tell -- no, the answer is no.

Q Did you among the bankrupt's records find a record of his transactions with Century Industries Co., Inc.?

A I could not find any.

MR. RUBACK: At this time, your Honor, I offer in evidence a Xerox or photocopy of the income tax return of the bankrupt for the year 1962 which was supplied to us, I believe, by the bankrupt, and which was previously marked in evidence on March 1, 1968 (handing same to Mr. Gartlir).

MR. GARTLIR: I have no objection to that but I would like to have an opportunity to examine it.

THE REFEREE: Mark it.

(Xerox or photocopy of the bankrupt's income tax return for the year 1962 marked in evidence as Trustee's Exhibit 35 of today's date.)

Q Mr. Lautt, does this Exhibit 35 indicate payments of interest by the bankrupt to one Robert Stein, and if so to what extent?

MR. GARTLIR: I think it speaks for itself, Mr. Referee.

THE REFEREE: He is going to question him

about it, I assume.

A It indicates interest payments to R. Stein in the sum of $28,800.

Q Mr. Lautt, could you identify from the bankrupt's records any payments made either by cash or check by the bankrupt to Robert Stein or R. Stein?

A I could not.

Q Mr. Lautt, I call your attention to Exhibit 31, the schedules in bankruptcy herein, and specifically to Schedule A-3 of this exhibit, and more particularly to the obligations which have been noted in said Schedule A-3 as being liquidated.

Now, in connection therewith the Bankers Trust Company is listed as a creditor as of November 3, 1963 in the liquidated amount of $6,966.17.

Can you determine the amount due to this creditor from the bankrupt's books or records?

A I cannot.

Q Michael Berlin is listed as a creditor as of November 13, 1963 in the liquidated amount of $4,000 --

A My copy has a different date.

Q 11/13/61, I am sorry. --

THE REFEREE: Michael Berlin?

MR. RUBACK: Yes, Michael Berlin.

THE REFEREE: Go ahead.

Q (Continuing) As of November 13, 1961 for the sum of $4,000.

Can you determine the amount due to this creditor from the bankrupt's books and records?

A I cannot.

Q Brand, Grumet & Siegel is listed as a creditor as of March 1963 for $6,590.89; can you determine the amount due to this corporation from the bankrupt's books and records?

A I cannot.

Q Century Industries Co., Inc. is listed as a creditor as of March 1962 in the liquidated amount of $45,222; can you determine the amount due to this creditor from the bankrupt's books and records?

A I cannot.

Q Century Industries Co., Inc. is listed also as a creditor as of March 1962 for the sum of $45,000; can you determine the amount due to this creditor from the bankrupt's records?

A I cannot.

Q Century Industries Co., Inc. is also listed as of August 1962 for the liquidated amount of $15,000; can you determine from the bankrupt's records the amount

due to this creditor?

A I cannot.

Q Chemical Bank-New York Trust Company is listed as of August 1963 for the liquidated amount of $5,979.31; can you determine from the bankrupt's records the amount due to this creditor?

A I cannot.

THE REFEREE: We will take five minutes.

(Recess taken at three o'clock p.m. and hearing resumed at 3:05 o'clock p.m.)

DIRECT EXAMINATION

BY MR. RUBACK CONTINUED:

MR. RUBACK: May I have the last question and answer read?

THE REFEREE: The Reporter will read it.

(Last question and answer read by the Reporter.)

Q Elliot Evans, Inc. is listed as of 1963 for the liquidated amount of $2,664.15; can you determine the amount due to this creditor from the bankrupt's records?

A I cannot.

Q Franklin National Bank of Long Island is listed as of July 1963 for the liquidated amount of $9,000; can you determine the amount due to this creditor from the bankrupt's records?

A I cannot.

Q Sylvia Martin is listed as of March 1961 for the liquidated amount of $35,000; can you determine the amount due to this creditor from the bankrupt's records?

A I cannot.

Q McDonnell & Co., Inc. is listed as of October 1962 for the liquidated amount of $2,523.70; can you determine the amount due to this creditor from the bankrupt's records?

A I cannot.

MR. GARTLIR: Mr. Referee, maybe we can save time unless counsel intends to go down one after the other --

THE REFEREE: I am going to let him try his own case. I was thinking the same thing, he can read off the entire list of names and amounts and then ask whether he can tell --

MR. RUBACK: I will take the suggestion, your Honor.

THE REFEREE: I do not want to interfere with his trial tactics.

MR. GARTLIR: I was just interested in expediency.

THE REFEREE: I agree with you, unless he has

something else in mind.

MR. RUBACK: I will try to group them, your Honor.

Q 086 Corp. and 680 Fifth Avenue Corp. is listed as of December 1961 for the liquidated amount of $1,975.02;

Overseas Credit Corp. is listed as of June 1962 for the liquidated amount of $50,000;

Preiss, Cinder & Hoffman, Inc. is listed as of May 1962 for the liquidated amount of $5,862.07;

Bernard Spector is listed as of November 1963 for the liquidated amount of $829;

James B. Taylor is listed as of April 1962 for the liquidated amount of $48,064.50;

Lawrence S. Teeman is listed as of April 1963 for the liquidated amount of $9,909.62;

Trade Development Bank is listed as of May 1962 for the liquidated amount of $50,000;

Cushman & Wakefield is listed as of January 1962 for the liquidated amount of $1,900;

Charles Wilson is listed as of 1963 for the liquidated amount of $550;

George Molouf is listed as of March 1962 for the liquidated amount of $3,000;

Chase Manhattan Bank is listed as of June 1962

for the liquidated amount of $2,900;

Royal State Bank is listed as of June 1962 for the liquidated amount of $2,900;

Hertz & Herzon is listed as of 1961 to 1964 for the liquidated amount of $3,700;

Harry Norbert is listed as of July 1962 for the liquidated amount of $7500;

Alex Yanowitch is listed as of November 1963 for the liquidated amount of $600;

Arnold L. Ginsberg is listed as of April 1961 for the liquidated amount of $5,550;

Abraham Pomerantz is listed as of October 1961 for the liquidated amount of $2,000;

Bernard Singer is listed as of April 1960 for the liquidated amount of $1400;

Irving Karassik is listed as of April 1963 for the liquidated amount of $850;

Daniel Bernstein is listed as of January 1963 for the liquidated amount of $485;

Beneficial Finance --

MR. GARTLIR: Your Honor, since there are so many can't they be identified by number unless there is a question as to amount?

THE REFEREE: Let's be patient and let him do it

this way. At least we will save a lot of answers. We will get one answer.

Are you reading every single one on the list?

MR. RUBACK: No, I am not.

MR. GARTLIR: I was suggesting that perhaps they could be identified by number.

MR. RUBACK: Please, let me try my case.

MR. GARTLIR: I am addressing myself to the Referee.

THE REFEREE: You can both address me.

I think this is a time-saving device anyway.

Now, let's go ahead.

DIRECT EXAMINATION

BY MR. RUBACK CONTINUED:

Q Beneficial Finance as of February 1963 for the liquidated amount of $260;

Tom Caine as of May 1962 in the liquidated amount of $10,000;

Frankfurt Mutual Insurance Company as of July 1964 in the liquidated amount of $1600;

Can you determine the amount due to any of these creditors from the bankrupt's records?

A I cannot.

Q Mr. Lautt, I call your attention to the fact

that the statements of affairs submitted by the bankrupt, which have been deemed marked as Trustee's Exhibits 32 and 33, indicate that the bankrupt maintained accounts at various banks, including the American Trust Company, the Manufacturers Hanover, the Bank of Bellwood, Orange Savings, Bankers Trust, Franklin National Bank of Long Island, East River Savings Bank, Chemical Corn, Royal State Bank, Kings County Trust Company, Greenwich Savings Bank and First National City Bank.

Do you have the bank statements pertaining to the American Trust Company?

A I have none.

Q Do you have the bank statements pertaining to the Manufacturers Hanover?

A I have none.

Q Do you have bank statements or checks relating to the Bank of Bellwood?

A I have no statements and I have two charges which were put into evidence today, bank charges.

Q Do you have any records pertaining to Orange Savings Bank?

A I have none.

Q Do you have the bank statements or checks relevant to the Bankers Trust Company?

A I have no statements, no checks.

Q Do you have the bank statements or checks relevant to the Franklin National Bank of Long Island?

A No.

Q Do you have any records relevant to the East River Savings Bank?

A No, I do not.

Q How many accounts did the bankrupt maintain at the Chemical Corn?

A Two bank accounts.

Q Do you have any records or bank statements relevant to the accounts at the Chemical Corn?

A Well, as to his account No. 007-260997 I have the bank statement for the month of August 1963. I also have checks which were paid in July of 1963 but I have no statement.

As to account No. 210-0012 at the same bank, I have no bank statements and I have checks for May of 1961.

Q Do you know in whose name or names the account was maintained at the Royal State Bank?

A Well, there was an account which was maintained in the name of Robert A. Martin and Vivian Sciascia.

Q Have you any records relevant to this account at the Royal State Bank?

A Bank statements for the period January 31, 1963 to February 27, 1963, and from May 31, 1963 to July 30, 1963. I have checks also.

Q For what period?

A I don't know offhand.

Q Do you have any bank statements relevant to the Kings County Trust --

I withdraw the question.

A I will give you an answer to that. Kings County Trust -- I have bank statements for the period August 31, 1960 to November 30, 1960, and from the period December 30, 1960 to March 30, 1961, and for the months of October 1961 and December 1961.

I do not have the bank statements for the interim periods, the greater periods I just recited, and those would be for the months of December 1960 and from April 1961 through September 30, 1961, and for the month of November 1961.

In addition I have duplicate deposit tickets showing activities in this account for the months of January, February and March 1962 but I have no statements.

Now, going back to your previous question with respect to the Royal State Bank, I would like to add to that although I did give you statements that I had available,

I did not indicate that there are missing statements apparently or gaps within the period covering the period February 28, 1963 to May 30, 1963, and that we have checks paid covering the period from October 12, 1962 to January 30, 1963, for which we have no statements.

Q Now, do you have the bank statements relevant to the Kings County Trust?

A I think I just answered that.

Q I am sorry.

Do you have any record relevant to the account of the Greenwich Savings?

A I have none.

Q Do you have bank statements relevant to the First National City?

A I have no bank statements on that account.

MR. GARTLIR: May I have the answer again, please?

(Last answer read by Reporter.)

Q Did the bankrupt from your investigation maintain an account at the Marine Midland which is not listed in his statement of affairs?

A Well, I have a bank statement on this account under his name for the month of March 1961, and I have duplicate deposit tickets on this account for the months of February,

April and May 1961.

MR. RUBACK: Your Honor, at this time I should like to read into evidence various questions and answers of previous examinations. I can do that before or after Mr. Gartlir's cross examination, whichever your Honor deems preferable at this moment.

THE REFEREE: I have no preference.

MR. RUBACK: In that event, you may cross examine.

MR. GARTLIR: Do I understand counsel has now concluded on specifications 1 and 2 on his direct case?

MR. RUBACK: No, I have not. I merely said you may cross examine this witness.

MR. GARTLIR: I mean with respect to this witness.

THE REFEREE: Well, he can recall him on some other specification, and he is going to read into the record questions and answers of a previous 21a examination.

MR. GARTLIR: Of the bankrupt.

MR. RUBACK: Of the bankrupt.

THE REFEREE: All right.

CROSS EXAMINATION

BY MR. GARTLIR:

Q Now, Mr. Lautt, when were you retained in this case?

A October 7, 1966.

Q Now, in connection with the answers that you have given to counsel on the direct case here, a number of questions have been put to you regarding work that you did in connection with the bankrupt's records.

I would like to ask, preliminarily if I may, when did you do this work?

A Since the date of our retention.

Q That is from October 1966?

A Not steadily, but from time to time.

Q I understand.

Now, the calculations that you have made with respect to numbers, totals and so forth, generally speaking, and I will come to it more specifically, the calculations that you testified to over the last two sessions that we have had with respect to checks drawn, and source and nature of those checks, when did you make those calculations?

A I would say within the last six months.

Q Would they have been within the last few weeks?

A No, not within the last few weeks.

Q When did you last do work on this matter?

A Yesterday.

Q Yesterday?

A Yes.

Q What kind of work did you do yesterday?

A I was conferring with counsel.

Q Other than conferring with counsel with respect to your old work papers, when did you do work on this matter?

A Probably two weeks ago. I do not have my diary here. I don't know.

Q I understand. That is close enough.

When did you arrive at the figures and totals for each year in question; when did you arrive at those totals?

A Perhaps a month ago.

Q A month ago?

A Yes.

Q Now, you refer to certain documents in front of you to refresh your recollection, have you not?

A Oh, yes.

Q What are they?

A My work sheets.

Q May I see them?

A Here is today's.

MR. GARTLIR: I would like to have that marked, please, for identification.

(Work sheets produced by witness marked as Bankrupt's Exhibit A for identification of today's date.)

Q Is that the only folder of work sheets?

A No, I have many.

Q I want the work sheets to which you referred in your direct testimony.

A They stem from a large number of work sheets.

Q Just the ones that you referred to.

A The ones that I referred to today or since I have been up here?

Q Please understand my question and perhaps we will understand each other.

Last Monday when you testified you referred to certain work sheets from which you gave information to counsel. I am only referring to those that you had in front of you when you testified. I assume you used those to refresh your recollection?

A That is right.

MR. GARTLIR: Those are the ones I would like to have identified.

THE REFEREE: He is handing them to you, counsel.

MR. GARTLIR: Then I did not understand.

Will you mark these for identification.

(Work sheets produced by the witness marked as Bankrupt's Exhibit B for identification of today's date.)

MR. GARTLIR: Will you mark that, too, please, three work sheets.

(Work sheets produced by the witness marked as Bankrupt's Exhibit C for identification of today's date.)

Q Now, would you tell the Referee, please, what Exhibit A for identification consists of, so that we have a record of what we are looking at?

A Exhibit A, on the left-hand side of this folder we have the summaries and recapitulations of the work that I did with respect to deposits, receipts and deposits. On the right-hand side are summaries and recapitulations of work that was done with respect to disbursements.

Q And Exhibit B?

A Exhibit B is a folder containing work sheets with respect to my examination of the Tracon debit and credit slips.

Q And Exhibit C?

A Exhibit C is a recap that I made of the available bank statements and also an indication of the periods for which the bankrupt had activities in the account for which

I do not have bank statements.

MR. GARTLIR: Thank you.

May I take 30 seconds or maybe a minute, Mr. Referee?

THE REFEREE: Yes. How about a five minute recess.

(Recess taken at 3:35 o'clock p.m., and hearing resumed at 3:45 o'clock p.m.)

CROSS EXAMINATION

BY MR. GARTLIR CONTINUED:

Q I take it, Mr. Lautt, you were present at least part or all the time the bankrupt was examined in this case under 21a?

A That's right.

Q And you heard the testimony that he gave in answer to the questions of Mr. Ruback?

A That's right.

Q When did you first begin your investigation of the books and records of the bankrupt?

THE REFEREE: Didn't he answer that a few minutes ago?

MR. GARTLIR: I would like to know when he began his investigation of the books and records.

A I have no clear idea of it. The best I can say at the moment is I suppose shortly after our retention.

Q In 1966?

A I would assume that.

Q And that is when you set about examining those records?

A That is when I started, yes. That is when I started collecting the books.

Q Did you have all the records about which you testified so far in your possession in 1966 or did there come a time when you had to get other records?

A I think there came a time when we had to get others. I seem to recall Mr. Martin bringing some over at a subsequent time. They did not come at one time, in one day, by any means.

Q I understand, but there did come a time when you got into your possession all the records that you finally did work with?

A Which I presently now have.

Q And which you finally worked with?

A Yes, of course.

Q Now, you know, do you not, that there were receipts signed in this case for records delivered to the trustee or to the attorney for the trustee?

A I know there are receipts.

Q Now, I show you copies of these papers and ask

you if you can identify them as being a list of the records that were turned over at one time or another in that group of receipts by either the bankrupt or his attorney to the trustee or the trustee's attorney, or to you --

MR. GARTLIR: I call to the attention of the Referee that some of these exhibits were previously marked in evidence in hearings before your Honor under 21a examinations.

Could we save time if I call upon the trustee or his counsel to acknowledge that there were receipts signed either by him or on his behalf?

MR. RUBACK: I would be glad to examine them.

THE WITNESS: I assume that --

MR. GARTLIR: I do not want you to assume. I will ask Mr. Ruback to look at it.

(Receipts are handed to Mr. Ruback.)

MR. RUBACK: I do not have this (exhibiting same to Mr. Gartlir). I have everything else.

MR. GARTLIR: You mean a copy of this letter?

MR. RUBACK: I do not have a copy of that letter but I have the others.

We will acknowledge we got delivery from Hahn's Warehouse of books and records.

MR. GARTLIR: That will be sufficient with this letter.

May we have counsel's statement --

MR. RUBACK: We will acknowledge that the trustee or his representatives received the records noted in these receipts, and further that books and records or records of the bankrupt were received from Hahn's Warehouse, although we do not have this letter of August 20, 1965.

MR. GARTLIR: With that statement I will offer this batch of receipts in evidence.

MR. RUBACK: No objection.

MR. GARTLIR: May it be marked as one exhibit, please?

THE REFEREE: Yes.

(Batch of receipts referred to marked as Bankrupt's Exhibit D for identification of this date.)

CROSS EXAMINATION

CONTINUED BY MR. GARTLIR:

Q I show you copy of this receipt which purports to be executed on behalf of Leon Radin & Co. and ask you if you can identify that?

A (Witness examines same) Yes, I can.

MR. GARTLIR: I offer copy of that receipt in

evidence.

There is a paper attached from the trustee.

THE WITNESS: I identified the top sheet, as a letter from Hertz & Herson.

MR. GARTLIR: Let's offer that first.

MR. RUBACK: No objection.

(Letter from Hertz & Herson marked as Bankrupt's Exhibit E of today's date.)

MR. GARTLIR: May I ask Mr. Ruback to take a look at these exhibits, both of which were previously identified in 21a and ask whether you can stipulate on this otherwise we will prove them later (handing same to Mr. Ruback).

I am trying to save time, Mr. Referee.

MR. RUBACK: Do you recognize this signature?

THE WITNESS: That is Thomas McCormack.

MR. RUBACK: I cannot identify this.

THE REFEREE: Mark them separately.

Are these two papers related?

MR. GARTLIR: Yes, they can be marked together, if you have no objection.

MR. RUBACK: No objection.

THE REFEREE: Then mark it Exhibit F.

(Two sheets, the top sheet on the letterhead

of Nachamie & Benjamin dated June 14, 1965 marked in evidence as Bankrupt's Exhibit F of today's date.)

Q Now, directing your attention to these receipts for the moment, Mr. Lautt, if I may, I draw your attention to a part of Exhibit D. Do you see that part of the exhibit (indicating)?

A I do.

Q That relates to three ledgers, does it not, three ledger books of Robert A. Martin signed by the attorney for the trustee, does it not?

A (Witness examines same) That is what it appears to say.

Q What are these ledger books?

A I haven't the slightest idea.

Q Did you ever look at them?

A I have an idea of what they may.

Q Mr. Lautt, please, I do not want you to guess. Did you ever look at these ledger books?

A They are not described sufficiently so I know what ledger books.

THE REFEREE: Ledger books -- how can he say whether he ever looked at them?

Q Did you ever see ledger books of Robert A. Martin?

A No. I saw ledger books of Robert A. Martin Associates,

Inc. and they were both coming in together, the books of this corporation and the books of this bankrupt -- the records of this bankrupt, rather -- were coming in, in identical deliveries and I have never seen a ledger of the bankrupt. I have seen ledgers of the corporate entity, of Robert A. Martin Associates, Inc., but I have never seen any ledgers of the bankrupt.

Q You did see ledger books of Robert A. Martin Associates, Inc.?

A That's right.

Q And did you make a study of those books?

A Not particularly, no. I just glanced through them.

Q Well, in glancing through them did you see that there were transactions had between Robert A. Martin and Robert A. Martin Associates, Inc. during the very period for which you were asked to look?

A The ledger book that I looked at was a general ledger for the year 1962. I remember going through it and it showed one account with some obligations to Mr. Martin on a subordinated loan of $65,000 carried forward from a previous year's ledger and some loan receivable transactions of some relatively minor sum in it.

Q Is that all you saw?

A That is all I noticed. I saw a lot of other things

but that was the only thing I was interested in seeing, the account with the bankrupt.

Q Did you know who the owner was of Robert A. Martin Associates --

A The owner?

Q Let me finish my question.

Did you know who the principal was or the principal owner of that corporation was?

A No, but from the similarity of names I assumed he had some position of importance with that company.

Q And did you inquire?

A I did not inquire.

Q Did you ask the trustee or the trustee's attorney about the relationship between Robert A. Martin and Robert A. Martin Associates, Inc.?

MR. RUBACK: Objection.

THE REFEREE: Sustained.

MR. GARTLIR: May I proceed?

THE REFEREE: I said sustained.

Q Did you inquire of the bankrupt?

A I did not.

Q Did you ever ask him at any time what the relationship was between him and this company?

A I did not.

Q Now, during the course of your examination of the records of the bankrupt to which you have just testified did you see any reference in those records to Robert A. Martin Associates, Inc.?

A Yes.

Q Of what nature?

A Payments to them.

Q Were they substantial?

A Probably something in the area of $100,000.

Q Per annum?

A If you let me look at my papers I probably can tell you. (Witness examines work sheets) The year 1960, the payments to Robert A. Martin Associates totalled $98,997.99.

THE REFEREE: From the individual to the company?

THE WITNESS: Pardon me?

THE REFEREE: Payments from the individual to the corporation?

THE WITNESS: With personal checks to the corporation.

THE REFEREE: That is 1960?

THE WITNESS: 1960.

Q Will you continue?

A The year 1961, $307,398.69.

The year 1962 $90,218.45.

1963 there are none.

In 1964, none.

Q Now, were you asked by the trustee or the trustee's attorney to make an investigation of the books and records of Robert A. Martin Associates, Inc.?

MR. RUBACK: Objection.

THE REFEREE: Sustained.

MR. GARTLIR: Your Honor, may I be heard on that?

THE REFEREE: Surely. I will hear you on anything.

MR. GARTLIR: Your Honor, please, the issue before this Court is the books and records of the record --

THE REFEREE: He did not look at them. That's important. Whether he was asked to is unimportant. He said he did not look at them.

MR. GARTLIR: I submit, if your Honor pleases --

THE REFEREE: I think you and I and anybody else will understand that had he been asked by the trustee to look at them he would have looked at them. We can draw that inference.

MR. GARTLIR: That I don't know, your Honor,

unless I ask the question.

THE REFEREE: I would draw that inference.

Q Now, Mr. Lautt, on direct testimony you testified as to certain records that were put into your possession in one way or another, and you enumerated them very carefully; do you recall that?

A I do.

Q Now, did I understand you to say that the investigation, or whatever work you did do here at the request of the trustee, related exclusively to the records that you had in your possession and nothing else?

A With that one exception.

Q Which?

A Of the bank statements of the Bankers Trust Company, of which there was a photocopy received from the Bankers Trust Company and there was some discussion about the inability to obtain the person from the bank who supplied that.

Q I understand. With that one exception?

A Yes, I think that is the only exception, yes.

Q Now, at the very beginning of your testimony you referred to a whole series of checks that were drawn and your testimony was that you were unable to ascertain the purpose of the checks in a certain quantity; do you

recall that?

A I do.

Q And you made certain tabulations as to the total from which you could not ascertain the purpose of the checks, is that right?

A That's right.

Q Let's see if I understand what you are saing:

You took a check or checks which was made out to X, Y, or Z Company?

A That's right.

Q And you looked at the check?

A That's right.

Q You could not tell what that was from the check, is that right?

A That's right.

Q What other investigation did you make, if any, to determine what the purpose of the check was?

A I looked among the books and records which we had, check stub books, which would have a notation of the nature and purpose of the check. I looked, of course, at the checks themselves to see if they had any indication on them as to the nature and purpose of the checks. I looked for cash books which may have been kept to indicate the nature and purpose of the disbursements. And that is the extent

of my search into that area.

Q Incidentally, I again would like to ask you with respect to the investigation that you are now testifying about, is it fair enough to call it that. an investigation to determine the purposas of the checks?

A It is fair and I will accept it.

Q And you made that in 1966?

A No.

Q When did you do that?

A I told you I could not tell. Probably the bulk of it was done, I imagine, in 1968.

Q You mean last year?

A That's right, as this trial was approaching.

Q You mean it was made some time after you got the records, as long as two years after?

A The bulk of it was done as long as two years after.

Q And you didn't make any of this investigation in 1966 when you first got the records?

A Some preliminary search into it.

Q I didn't get the answer.

A Some preliminary search into it but I say the bulk of the work was done in 1968 and 1969.

Q What preliminary work did you do in 1966 to make this investigation?

A Listing the books, seeing what kind of records were made available to us, discussing, telling the trustee's attorney what we had on hand, the deficiencies of it, generally describing it but not going into an actual tabulation of it as I did subsequently.

Q I am asking you now a little more specifically: I am talking now about your testimony about being unable to determine the purpose for which a particular check was drawn, and I am relating it only to that, not what books you had and not what books you did not have, but in that determination did you do any work in ascertaining the source of the checks in 1966 -- not the source of the checks but the purpose of these checks in 1966 when you first got the records?

A Yes, I did it to the extent I have just described. I went through the checks in a preliminary way seeing if there are any notations on them to show the nature and purpose of the disbursements. By that time I knew that we did not have any check books, we did not have any cash books, we did not have any ledgers, and that is all I intended to do until the time came for this trial, or it was beginning to approach and I thought I had better begin preparing for it knowing what would happen eventually.

Q In other words, you made this examination and

tabulations for this trial?

A Pardon me?

THE REFEREE: That is what he was retained for.

MR. GARTLIR: I want him so to testify.

Q Was it for this trial?

A Oh, for no other purpose.

Q Were you asked to do it in 1966 by the trustee?

MR. RUBACK: Your Honor, I object.

THE REFEREE: Sustained. I think you carried it far enough. I do not see what difference it makes.

MR. GARTLIR: I withdraw it.

Q Now, you attended these hearings before the Referee on the 21a examinations over a long period of time, as I recall, is that right, Mr. Lautt; it took a long period of time for these hearings and there was extensive questioning of the bankrupt about his affairs, is that correct?

A As I said, the testimony would speak for itself. Whether it was extensive or not, I am not a judge of it.

Q As a result of that investigation, or that hearing, you knew, did you not, that this bankrupt did have substantial accounts with Tracon and Century, you knew that, didn't you?

A I knew he had substantial accounts with Tracon.

Century -- I cannot identify any records with Century.

Q I asked whether you knew from the hearings that you attended, from his own testimony, that he had extensive accounts with Century?

A I do not recall that testimony on Century. I recall the testimony on Tracon to some degree.

Q You knew he had an account with Century, didn't you?

A I saw it in the schedules.

Q What records of Tracon did you have in your possession, if any?

A They were put into evidence here.

Q What records of Century did you have?

A I can't find any with Century.

Q Then you did not have any?

A That's right.

Q And you did not ask for them?

A No, I did not ask for them.

Q Did you tell the trustee to subpoena the records of Century?

MR. RUBACK: I object.

THE REFEREE: Sustained. It is not his job to tell him to subpoena them.

Q Were you asked to get the records?

MR. RUBACK: By whom?

MR. GARTLIR: By anyone.

MR. RUBACK: Object.

THE REFEREE: Sustained.

Q Now, were you present when you heard this bankrupt testify that he kept no personal records of his accounts with Tracon or Century?

MR. RUBACK: Object. There has been no testimony at this hearing.

MR. GARTLIR: I asked whether he was present when the bankrupt so testified.

MR. RUBACK: In this 21a examination?

MR. GARTLIR: Yes.

A I will have to look at the records. I really do not recall.

THE REFEREE: He does not recall.

MR. GARTLIR: All right, that's his answer.

Q Now, you have testified that there was included in the records a number of stock purchase slips, debit and credit memos, I think you referred to them, with Tracon?

A Yes.

Q How would you describe them?

A Debit and credit slips.

Q And were they loose or bound?

A Some were loose and some were bound.

Q Did you examine them in connection with this determination?

A I examined them to the extent that I was interested in them.

Q How interested in them were you?

A Certain aspects of them I was interested in and certain aspects I had no interest in them.

Q You mean you picked and chose from the slips or you had no interest in the slips at all? I don't understand. Will you try to clarify it?

A I picked and chose.

Q In connection with this determination and the purpose of checks drawn by the bankrupt did you examine that record?

A Yes.

Q What did it show with respect to that particular question?

A With respect to that particular question -- did you say checks drawn by the bankrupt?

Q That's what I said.

A No, I didn't go into that.

Q You deemed it of no significance?

A No, because --

Q That's all. You deemed it of no significance.

A I must tell you why.

Q I will let you tell me why.

A Because in my computations of checks for which I did not know the nature and purpose I did not include any checks in that tabulation of checks issued to the Tracon Corporation.

Q Did you consider it a possibility that it could have been a check issued to someone else in connection with the account of the Tracon Corporation; did you consider that, Mr. Lautt?

MR. RUBACK: I object to the form of the question.

MR. GARTLIR: Your Honor, I am cross examining this bankrupt.

THE REFEREE: I will allow it.

MR. GARTLIR: May I have the question read back?

(Pending question read by Reporter.)

Q With the bankrupt.

A If a check was issued to a person other than the Tracon Corporation I did not see if that check was reflected in the bankrupt's account with the Tracon Corporation.

Q Then the answer to my question is no, you did not consider it?

A I did not.

THE REFEREE: You said in your calculations or computations of checks which could not be accounted for as far as their nature and purpose you did not include the Tracon checks?

THE WITNESS: That's right.

THE REFEREE: Why is that?

THE WITNESS: Because I had all the slips of Tracon and I assumed if I went through each and every one of the checks issued to Tracon I probably would find the bulk of them represented by credit slips issued by Tracon so I passed it by and saved myself that much effort.

THE REFEREE: So the bankrupt got the benefit of it.

THE WITNESS: To that extent, of course.

Q However, had the checks been drawn to a third party in connection with the transaction between him and Tracon it would not have shown, isn't that correct?

MR. RUBACK: Your Honor, I object on the ground --

THE REFEREE: It is argumentative.

MR. GARTLIR: I withdraw it. He answered the question.

Q What notation did you make of the Tracon debit and credit slips; did you analyze them?

A I went through -- primarily my work on the Tracon slips consisted of going through the debit tickets. In other words, by debit tickets items for which Tracon charged Mr. Martin, and where the charge was for moneys passing from Tracon to him I attempted to trace them into the bankrupt's records to see if there was such a deposit in any of the accounts which I had records for or whether there was not such a deposit.

THE REFEREE: In other words, where you saw it was money paid by Tracon to the bankrupt you tried to follow it?

THE WITNESS: I tried to follow it.

Q How about the other way around, reverse, a debit instead of a credit?

THE REFEREE: How would he follow that unless he went to Tracon's books.

MR. GARTLIR: I am asking him what he did with respect to an analysis of the Tracon debit and credit memos.

THE WITNESS: I think we covered that field.

MR. GARTLIR: Whether we covered that field remains to be seen. I am asking a question.

Q I want to know everything you did with the debit and credit memos. You said so far that you just tried to trace money into the account. Is that all you did? Is that the sum and substance?

A No, it is not the sum and substance because I have explained, but I will repreat it.

Q All right.

A As far as the debit tickets are concerned, I just explained that by saying where the debit tickets represented the passing of funds from Tracon Corporation to the bankrupt I attempted to trace all of those items to the bankrupt's records.

Now, as far as credit slips are concerned, where the bankrupt was given credit for payments made to Tracon, I did not care about it because in my analysis of payments made by him as to whether the payments are identifiable or not, as to nature and purpose, I omitted any checks he issued to Tracon which I could find, so that there is no reason for me for this trial to go into an analysis of credits of money passing from him to Tracon, since I am not testifying that I could not determine the nature and purpose of any payments he made to Tracon.

Q In other words, you were only asked to show that you could not identify the nature of payments made by

the bankrupt, is that what you are saying?

MR. RUBACK: Object.

THE REFEREE: That is not what he said.

THE WITNESS: That is not what I am saying.

THE REFEREE: Explain it to him again.

MR. GARTLIR: No, may I ask with the Referee's permission to continue my questioning?

THE REFEREE: I don't whether I should permit you to continue at this point when you say that what I think is awfully clear and which he has repeated several times you paraphrase and indicate that you simply don't get it.

MR. GARTLIR: I am sorry if the Referee feels that way. I am trying to find out from this witness what he did.

THE REFEREE: He assumed that all payments made to Tracon were correct. He was not looking for anything improper or any improprity in those payments. He assumed for the purpose of his preparation for this trial that they were proper.

MR. GARTLIR: I understand.

THE REFEREE: Now, he looked at payments by Tracon to the bankrupt and then he tried to trace and follow, and where he could not follow them he

indicated it.

Now, have I stated this properly?

THE WITNESS: Yes, sir.

CROSS EXAMINATION

CONTINUED BY MR. GARTLIR:

Q And that is the sole analysis you made of these debit and credit memos?

A That is right.

Q And you never received any records of Century of any kind for the same purpose, making an analysis of Century's records?

A No.

Q Now, you have further testified, Mr. Lautt, with respect to checks drawn to Robert A. Martin; you gave a series of checks that were drawn to Robert A. Martin and you totalled them.

Were you able to find out where those checks went or did you find out at the time that you looked where those checks were deposited?

THE REFEREE: Which checks are you talking about?

MR. GARTLIR: The checks drawn by the bankrupt to Robert A. Martin. There were a series of them.

THE REFEREE: Checks drawn to himself?

A I usually could tell. I have a fairly good idea of

where those checks went.

Q Did you make a summary of them?

A I don't think I summarized all the checks made to him, no. I didn't make a summary of that.

Q I don't mean a summary of the checks made to him. I think you did testify of a summary of the checks made to him.

My question is: did you make an investigation of where those checks went by endorsement or anything else on the back of the check?

A No, I said I did not do that.

Q You did not do that?

A I did not do that. I did not do that of all the checks made out by Mr. Martin to himself.

Q And you would not know whether they were deposited in another Robert A. Martin account?

A Oh, where they were deposited I know.

Q That is what I just asked?

A You did not ask me that.

Q I thought I did.

THE REFEREE: No, I don't think you did.

Q I asked first where the checks went and then I said by way of deposit or otherwise. If I didn't, then I ask you now.

A My answer is still the same.

May I explain for a moment what I am getting at.

If a check was issued to Mr. Martin and let's say endorsed over by him to Macy's, I would have passed that check by and that would be the end of it. If a check was made out to Mr. Martin on the American Trust Company and he deposited in the Irving Trust Company, I would make a note of it because I now have a deposit in the Irving Trust Company which I can account for by way of really a bank transfer in effect.

Q Well, they were a transfer, weren't they?

A I was interested in that because I wanted to control my analysis of deposits.

THE REFEREE: Suppose the check was made out to John Jones and you did not recognize it, endorsed over to John Jones --

THE WITNESS: I did not care about that. I assumed Mr. Martin maybe had --

THE REFEREE: You did not question the propriety.

THE WITNESS: They were small amounts made out to himself and I did not bother with those.

Q Mr. Lautt, my question is with respect to the Robert A. Martin checks, drawn to Robert A. Martin and

deposited in a Robert A. Martin account. Now, we understand each other?

A Yes.

Q Did you make a separate tabulation of those?

A I did.

Q Did you testify to that?

A I testified to it in effect, yes, I did.

Q Now, I would like to know, do you have a record -- is it a fair statement to say these were transfer exchange checks?

A Yes.

Q Do you have a separate tabulation of that?

A I do.

Q May I have that, and while you are looking for that, and I assume you are, was that included with the number of checks for which you could not find a purpose, separate?

A No, it was not included among the checks for which I did not find a purpose. It was not included among the deposits for which I could not find the source or nature.

Q I understand. But you did make a record of that?

A I did.

Q I would like to have that record.

THE REFEREE: I remember in each case when the witness testified, according to my desk notes, he talked about 1962, 3, 4, and 5, and in each case he was asked about checks, the grand total issued by the bankrupt, and the last question was in each case what checks were drawn to the bankrupt in 1962, the answer was none and in 1963, none.

MR. GARTLIR: How about 1961, Mr. Referee?

THE REFEREE: I think in 1961 he tabulated the checks in each of the bankrupt's accounts, checks to the bankrupt and cashed, none. I don't know about deposits.

MR. GARTLIR: I think he said --

THE REFEREE: I don't know whether he testified.

THE WITNESS: I did not, no. This is the first testimony about checks paid to the bankrupt. Before it was checks paid by cash.

THE REFEREE: Checks payable to the bankrupt and cashed.

THE WITNESS: One check drawn to Robert A. Martin and appeared to be cashed over the counter for $20,800, I recall.

Here are my work sheets on checks drawn by

Robert A. Martin to himself and deposited in other of his accounts.

Q May I have that?

A Yes. It could be even checks drawn to the bankrupt directly. It is a combination of the two.

THE REFEREE: That is a common practice, isn't it, when you run short in one account you transfer it to another.

THE WITNESS: It is.

MR. GARTLIR: Before I forget, Mr. Referee, the checks to which reference has been made or the records which are here in court, I believe, and I would like to be afforded an opportunity of examining those documents before the adjourned date. I assume we will have one at some convenient time.

THE REFEREE: Where are they being kept?

THE WITNESS: At my office.

THE REFEREE: I am sure you may attend there at any time you please during business hours and they will allow you to examine them.

Am I correct?

THE WITNESS: That's right, sir.

MR. GARTLIR: Thank you.

Would you mark this for identification, please?

(Three work sheets marked as Bankrupt's Exhibit G for identification of today's date.)

CROSS EXAMINATION

CONTINUED BY MR. GARTLIR:

Q Mr. Lautt, without burdening you too excessively, I hope, you have now stated that with respect to the Robert A. Martin checks transferred into the Robert A. Martin accounts you have here a record which has been marked Exhibit G for identification.

You have also told the Referee that with respect to Robert A. Martin checks turned over for purposes, as you put it, passed and did not make issue of, or even cash checks that you passed becsuse they appeared to be for purposes that you did not concern yourself with -- I don't know of cash checks.

MR. GARTLIR: I am sorry, I will withdraw it.

Q Now, I would like to have you give me an example or examples, since you have the records, of the kind of checks that you have referred to for which you say you cannot find any purpose. Can you give me a few examples from your records that you refer to that total up these large sums of money?

Incidentally, do I quote you correctly, that you cannot find any purpose, is that your testimony?

A Nature and purpose.

Q I am sorry. Nature and purpose.

Give me an example or examples.

Is that an exhibit that you are referring to which has been marked for identification?

A Yes, it is, Exhibit A.

Q All right.

A The first item, and I will take them right down the line -- the first item are checks to cash and a check to Robert Martin which he cashed --

Q What is the amount of that?

THE REFEREE: $20,000.

A $20,800, and I am reading from my recapitulation of checks drawn for the year 1960 now.

Q All right.

A Those checks are in this group.

Q I understand.

A There is a check to cash which has a notation "payment of loan", and it is illegible. I don't know what -- it seems to be repayment of a loan. There is some scribbling that I cannot identify, and that is $1700.

Q You mean the name is illegible?

A It is a check to cash and there is a notation on the check that is illegible to me.

Q You use the word "repayment" of loan. Did you say that those words are on there?

A Yes, but I don't know who with.

Q I understand. You just cannot make out the name.

A I cannot make out the name. I don't know who the transaction is with.

Q By the way, did you ever ask anyone about that?

A No.

There are payments made to Oppenheimer & Co. and I don't know the nature and purpose of the checks.

Q Do you know if that is a stockbrokerage house?

A I know it is a stock brokerage house. I don't know what is being bought. I don't know what is happening to that account. All I know is a check is made out to this firm but I have nothing to indicate what precisely is going on with the payments, what this payment covers.

Q Incidentally, I hope you will forgive me for interrupting you --

THE REFEREE: The witness is very careful to say nature and purpose. A check made payable to a stock brokerage house which does not say for the purchase of 100 shares of so and so does not disclose nature and purpose.

MR. GARTLIR: I would agree with that, your Honor. There is no question about it.

THE REFEREE: That is what he is saying.

Q May I interrupt you just briefly?

A Yes.

Q No, you go ahead, and I will come back to it.

A Ted Baron, a check made out to Ted Baron in the sum of $1300 with no notation of the nature and purpose of the payment.

Philip Sherman in the sum of $800, also in that category.

Joseph Tillinger in the amount of $341.78.

Fred Senk in the amount of $1,184.40.

Robert A. Martin Associates in the sum of $98,997.99.

THE REFEREE: Is that one check or an accumulation of checks?

THE WITNESS: These are an accumulation of many checks.

Q Total for the year?

A Total for the year, yes.

Q Did you have a record of Robert A. Martin Associates of any kind?

A A record of what?

Q A record or book of account of any kind of Robert

A. Martin Associates?

A Of the corporation, yes. I had the general ledger for 1962 which would be the only record of account.

Q Did you look at that book?

A 1962 would not help me for payments made in 1960.

Q Did you ask for the Robert A. Martin book of 1961?

A I did not ask for the Robert A. Martin book. The Associates' book.

Q I am talking about the corporation.

A I did not ask.

Q Mr. Lautt, let me interrupt you, if I may.

You have a series of checks which you could not determine the nature and purpose, that is what you testified to, they were named payees and in this one instance Robert A. Martin Associates.

Now, you have done accounting where you have seen similar checks before, have you not, where you would have to find another record showing what the check is for?

A Yes.

Q What kind of a record would that be?

A Either a check stub or cash disbursements book.

Q Or a book of account of some kind?

THE REFEREE: Of the bankrupt.

MR. GARTLIR: No, I am talking now --

THE REFEREE: Whose books --

MR. GARTLIR: Mr. Referee, my questioning of this witness at this point is somewhat hypothetical, if I may. If you will listen to the questions that I put, I asked him --

THE REFEREE: I am listening very carefully.

MR. GARTLIR: I understand, Mr. Referee. I have asked him --

THE REFEREE: Don't imply that I do not.

MR. GARTLIR: I have done accounting of this kind before.

THE REFEREE: He has done it for so many years that memory of man runs not to the contrary.

MR. GARTLIR: I hope not. That would make him very ancient indeed. I hope he is not that old.

May I come back to my question, if I may?

THE REFEREE: Yes.

Q Now, where you do this accounting you have to refer to a book of some kind, bank book or some other book?

A I don't know what you mean by bank book or some other book.

MR. GARTLIR: Let me withdraw it.

Q In order to ascertain the purpose and nature of

a check where you do not have the check stub book, how do you go about ascertaining what the purpose and nature of the check is?

A In a bankruptcy case?

Q In any case.

A Well, if it was a client of mine I would certainly make sure that he had a check stub book and that he had a cash book in which this information was set forth.

Q A cash book?

A Or a check stub book, showing the nature and purpose of the payment.

Q And it would have to be some kind of a book, it would be either a check book or a book of account, one or the other?

A That is what I would want really.

Q And you would go to a book of the person who drew the check, if you like, to find out what the purpose and nature of the check was for?

A That is right.

Q And you might have another paper, might you not, a voucher?

A I might have a voucher.

Q Or a bill?

A Or a bill.

Q As a matter of fact that would be a primary record, wouldn't it, if you had to certify it, the voucher or the bill?

A That is a question of law which I really cannot respond to.

Q That is not a question of accounting?

A Whether a cash book is not primary compared to a bill--

Q It is not a question of accounting you say?

A Whether --

THE REFEREE: He said he did not want to distinguish between a bill and a cash book.

Off the record.

(Discussion held off the record.)

Q In any event, there would be some other record or paper you would have to go to if you did not have a check stub book; is that a fair statement?

A That is a fair statement.

Q Now, you did not have a record, a direct record, of the bankrupt in the bankrupt's own possession, a book of account, isn't that what you are saying, to go to?

A No, I am not saying it is a book of account. I am talking about the rudimentary approach to this identification of payments which is a check stub book or a cash book.

Q I just said you did not have that. I am agreeing

with you.

You did not have the bankrupt's book of account, and you did not have the bankrupt's check book stubs, isn't that right?

A Yes, that's right.

Q You had another book, that is the Robert A. Martin Associates, Inc. book, the corporation. I am talking about this $98,000. That is true, isn't it?

A That is true.

Q And it was not for the right year anyway?

A That's right.

Q Did you ask for the year in question?

MR. RUBACK: I will object.

THE REFEREE: You are sustained. It is about time you did. The whole line of questions was improper and you should have objected long before.

MR. RUBACK: I wanted to give counsel --

MR. GARTLIR: May I have another minute, your Honor?

THE REFEREE: Surely.

Off the record.

(Discussion held off the record.)

THE REFEREE: I think we will take an adjournment now. I will put this over to June 5th at

10:30 o'clock a.m.

(Witness excused.)

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(Adjournment taken to June 5, 1969 at 10:30 a.m.)

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TRANSCRIPT OF PROCEEDINGS BEFORE HON. ASA S. HERZOG
DATED SEPTEMBER 30, 1971 113 131a

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
(In Bankruptcy)

In the Matter
of

ROBERT A. MARTIN, a/k/as
R. ALLAN MARTIN, a/k/as
ROBERT ALLAN MARTIN,

Bankrupt.

No. 65-B-153

United States Court House
Foley Square, New York, N.Y.

September 30, 1971, 2:15 P.M.

Before:

HON. ASA S. HERZOG Referee

- - - - -

ADJOURNED HEARING ON SPECIFICATIONS OF OBJECTIONS TO BANKRUPT'S DISCHARGE.

- - - - -

Appearances:

Messrs. LEVY, LEVY & RUBACK,
Attorneys for Trustee,
225 Broadway,
New York, New York
By: ROBERT I. RUBACK, ESQ., of Counsel

BEATRICE R. GOTTLIEB
Official Court Reporter
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Foley Square, New York, N. Y. 10007
REctor 2-3933

Appearances (continued):

Mwssrs. HOFHEIMER, GARTLIR, HOFHEIMER, GOTTLIEB & GROSS,
Attorneys for Bankrupt,
61 Broadway,
New York, New York
By: BERNARD GARTLIR, ESQ., of Counsel

Also present:
MR. ROBERT A. MARTIN.

- - - - -

MR. GARTLIR: If your Honor please, this is a continuation of the hearing on the specifications of objections to the discharge, and I think Mr. Lautt was being cross-examined by me when we last adjourned, which I think was in 1969.

THE REFEREE: June 5, 1969.

MR. GARTLIR: Yes, your Honor, that is true. May we go off the record?

THE REFEREE: Yes. Off the record.

(Discussion off the record).

THE REFEREE: Let's go ahead.

S I D N E Y C. L A U T T, recalled as a witness, having been previously duly sworn by the Referee, testified further as follows:

THE REFEREE: Mr. Lautt, you are still under oath.

MR. GARTLIR: Before I go into cross-examination, I have had the advantage of going

into the transcripts since then, and if I may I would like to see if I can correct one item in the transcript on page 77.

According to the transcript I offered in evidence a batch of receipts covering records and requested that it be marked as one exhibit. It was indicated there was no objection but the record indicates it was marked for identification. I think the record should indicate that they were received in evidence.

THE REFEREE: Is that all right?

MR. RUBACK: No objection.

THE REFEREE: I am changing the record to read "marked as Bankrupt's Exhibit D in evidence".

MR. GARTLIR: Thank you, your Honor.

Now, again I will refer for convenience, and I hope to be relatively short with the balance of this cross examination to the transcript, again the benefit of which I have had and studied, as I assume counsel has, and I direct the attention of Mr. Lautt to the questions and answers in the transcript, and if you wish, your Honor, I made an analysis of page numbers and I can refer to the page if it will assist.

I know this is not regular normal cross examination but in view of the lapse of time it may help us all to refresh our recollections.

THE REFEREE: I think we can allow you a little leeway in view of that fact.

CROSS EXAMINATION BY MR. GARTLIR:

Q Now, on page 6, approximately line 15, Mr. Lautt, you testified that you had not been retained as accountant for the trustee. Do you have a record of when you actually were retained? Let's say by year. I will take it by year.

THE REFEREE: That would be an official record anyhow, wouldn't it?

A October 7, 1966.

Q October 7, 1966?

A That's right.

Q And that was during the period of the examinations in the 21a proceedings, was it not, Mr. Lautt, and the examinations in the 21a proceedings according to the record commenced on or about March, 1965 and continued until some date in 1968, June 12th?

A Yes.

Q Your answer is yes?

A You have the date of our retention.

Q Were you present at any of the 21a examinations?

A I believe I was.

Q Did you at any time have recourse or were you given recourse to the transcripts of those hearings?

A They were available in the court-room and I suppose in our attorneys' office, but I don't recall ever reading them.

Q Then you say you did not look at the transcripts during the course --

THE REFEREE: He didn't say that. He said he does not recall.

A I don't recall reading them.

Q Is it possible you looked at the minutes of the hearings?

A It's possible. I don't recall now.

Q Now, when you were retained by the trustee's counsel would you tell me what were the specific instructions which you received as to the nature of your task?

MR. RUBACK: Your Honor, I object.

THE REFEREE: Sustained.

Q Did you receive instructions from anyone as to what to do?

MR. RUBACK: Objection.

THE REFEREE: Sustained. It is in the order for his retention.

Q What instructions did you receive insofar as examination of records is concerned?

MR. RUBACK: Objection, your Honor.

THE REFEREE: Sustained.

Q At whose direction did you prepare the exhibits which were offered in evidence?

MR. RUBACK: Object.

THE REFEREE: No. I will allow it.

Q At whose direction?

A Well, it was prepared after conferring with counsel to the trustee.

Q Is it a fair statement to say that you prepared them at his direction for the purpose of this hearing?

A Yes, it is fair. It is not entirely accurate but it is fair.

Q Suppose you make it accurate. What is it you received by way of directions?

A We were told -- as a matter of fact, after conferring with counsel to the trustee the directions that I received as to my examination into the books are recited

in my affidavit which is annexed to our retention, or the petition for our retention.

Q Do you have it with you?

A I have it here.

MR. GARTLIR: For convenience, if your Honor please, rather than refer to the original --

Q Is that a copy, Mr. Lautt?

A This is our office copy.

Q May I take a look at it?

A Yes (handing same to counsel). This is our copy.

MR. GARTLIR: I assume that this is on file and that we may deem it in evidence, if your Honor please.

MR. RUBACK: No objection.

THE REFEREE: It will be deemed marked Bankrupt's Exhibit H in evidence.

BY MR. GARTLIR:

Q Now, in your direct testimony you referred to certain cancelled checks, bank statements -- I don't believe you referred to bank statements -- but basically the testimony which you gave, and the exhibit which you prepared which has been marked in evidence, relates almost entirely, does it not, to the checks that were in your possession?

A The checks and the bank statements, that's right.

Q And bank statements to the extent that you had them.

Did you not receive from the trustee or the bankrupt the following: stock sales slips?

A Of Robert Martin?

Q Yes, of Robert Martin.

A I don't think so. Let me see. (witness examines records).

MR. RUBACK: If your Honor please, Mr. Gartlir has inquired as to this and while I do not want to limit his examination if you refer to the transcript, page 90, you will note that it probably happened shortly before that and after you examined him as to the stock slips, etc. which referred to Tracon --

A (continuing) -- The answer is yes.

Q The answer is yes?

A Yes.

Q Of the bankrupt?

A Of the bankrupt.

Q Now, did you also receive correspondence of the bankrupt?

A From the bankrupt?

Q Letters to and from the bankrupt, that is correspondence which was sent to you.

A There may have been some in the records of Robert Martin Associates, Inc. for all I know. I don't know.

Q You don't know?

A I don't know. They may have been part of the records of Robert Martin Associates.

Q But you don't know whether you received correspondence of the bankrupt himself?

A Whether among the records in the files of Robert Martin Associates there was personal correspondence relating to Robert Martin I do not know.

Q And did you also receive what perhaps may better be described as stock confirmation slips of the bankrupt, that is, vouchers or other documentation of the confirmation of purchases and sales of securities -- not just purchases but sales?

A Well, I do have among the bankrupt's records a batch of confirmations of purchases and sales.

Q Now, in the course of your making your investigation or pursuing the instructions and directions that you were given by trustee and his counsel, did you have occasion to refer to either the stock purchase slips or the stock confirmation slips?

A I did.

Q And in the course of examining those papers were you able to ascertain the purpose and nature of checks which were referred to in your exhibit?

A I may have, but where in my testimony I say I was not able to determine the nature and purpose of the checks, I could not find anything.

Q Let me see if I understand what you are saying.

You did examine the stock confirmation slips for the purpose of ascertaining the purpose and nature of the checks for which you did not have any other record, is that correct?

A No. Where I had transactions or checks issued to stock brokerage firms I attempted to trace them to the confirmations which I did have.

Where I could not find -- where I could not match the check to any confirmation slips I had they remained in my computation of undetermined disbursements.

Q But did you reflect any in your exhibit that could be ascertained from those stock confirmation slips? You just have to answer yes or no. I don't think you have to answer how many.

MR. RUBACK: I think he should permit the witness to look at his records to see whether he did.

MR. GARTLIR: All right.

A I did, yes.

Q And there were some?

A There were some.

Q Well, without pressing you on the exhibit, Mr. Lautt, what would you say the approximate number or percentage that were determined by the stock confirmation slips?

A I would say they were a negligible amount. A small amount, I would say.

Q Were you told what business the bankrupt was in?

A It is shown in --

Q No. My question is, were you told?

A Yes, I was told.

Q What were you told?

A As I recall, he was a business broker.

Q A business broker?

A Yes; that's my recollection, sir, of his activities as described in his schedules.

Q Having reviewed his records, what would you say his business was?

MR. RUBACK: Object.

A Well --

THE REFEREE: Sustained. I am not interested in what he says there. I am interested in what they were.

MR.GARTLIR: I would like to comment, Judge, I feel I would like to press the question. I have a reason for asking, if you will permit me without a jury to ask, and to argue on the point. I don't normally argue on objections. If your Honor would permit it I would like to be heard on some of these objections.

THE REFEREE: I am not really interested in what Mr. Lautt thinks his business was.

MR. GARTLIR: That is not the substance of my question.

THE REFEREE: The question is, what in your opinion do you think.

MR. GARTLIR: Yes, having reviewed the records, not in the abstract.

THE REFEREE: We have the man's schedules in which he describes what his business is, and I think that is the best test of what business he was actually in.

What do the schedules say?

MR. RUBACK: Your Honor, as a matter of fact

the bankrupt filed an amended Statement of Affairs in which he described himself under oath as being a business broker.

MR.GARTLIR: If your Honor please, the bankrupt is sitting in Court and has indicated to me because he is not on the stand that that statement was put in and he was asked to file an amended schedule based on the application made to this Court, and so described himself. However, there is no point, he is not on the stand.

THE REFEREE: It goes to the way of being ridiculous. No one would tell him to describe himself as a business broker, and he wouldn't do it under oath if he wasn't one. Nobody, particularly with my permission, would tell him how to describe himself.

All right, let's go on. Next question. I think we are just wasting time.

MR. GARTLIR: I am sorry, your Honor.

BY MR. GARTLIR:

Q Mr. Lautt, you knew, did you not, that there was a corporation called Robert A. Martin Associates,Inc.?

A Yes.

Q And you did receive loose-leaf books and

records of that corporation?

A I did.

Q And they were ledgers, cash books and so on, without going into detail?

A Yes.

Q Did you receive any instructions regarding the examination of those books?

MR. RUBACK: Object.

MR. GARTLIR: Does your Honor sustain the objection to that?

THE REFEREE: The question is, did he receive any instructions --

MR. GARTLIR: With regard to the examination of the books of Robert A. Martin Associates, Inc.

THE REFEREE: I will allow it.

Q Did you?

A No, I did not.

Q One way or the other -- did you receive instructions not to look at those books?

A I did not.

Q Did you look at those books?

A I glanced at them generally.

Q I didn't get that answer.

A I glanced at them generally. I made no audit of

them.

THE REFEREE: You said you made no audit of them?

THE WITNESS: I made no audit of the books of Robert Martin Associates, Inc.

BY MR. GARTLIR:

Q Did you know, or were you able to tell, or were you told of the relationship between Robert A.Martin, the bankrupt, and the corporation Robert A. Martin Associates, Inc.?

MR. GARTLIR: Could I have the question read back before it is answered?

THE REFEREE: Yes, read it back.

(Last question read by reporter).

Q Do you know, or were you told, or were you able to ascertain the relationship between Robert A. Martin, the bankrupt, and the corporation Robert A.Martin Associates, Inc.?

A I knew that Robert A. Martin was an officer of Robert A. Martin Associates, Inc. I assumed he was one of the principal officers, but that's as far as it went. I don't think I was told by anybody about this. Maybe I read about it in the schedules or something, some recitation somewhere.

THE REFEREE: In the schedules he states: formerly a stockholder of Robert A. Martin Associates.

BY MR. GARTLIR:

Q Did you know that he was the principal stockholder of Robert A. Martin Associates, Inc.?

A I don't think I did know.

Q In any event, at no time did you examine those records in terms of investigation or audit, and by those records I mean of the corporation?

A That's right.

Q Insofar as checks on your schedule drawn to the bankrupt and deposited in the account of Robert A. Martin Associates, Inc. or insofar as checks drawn by the bankrupt to Robert A. Martin Associates, Inc. -- insofar as those checks are concerned as to which you could not tell the nature and purpose that you have testified, you did not, did you, look at the books and records of Robert A. Martin Associates, Inc.?

A I did not.

Q You referred in your testimony to checks to a supermarket, department store, rent, and didn't include those in your tabulation because, according to page 35 of the transcript, you assumed that they were for personal debts of the bankrupt, living expenses and so on.

Is that a fair statement?

A That's right.

Q Now, you made this assumption based on what, the nature of the name?

A The nature of the name, the department store.

Q Now, Mr. Lautt, you have in your schedule -- again without referring to it, and I assume you can if necessary -- a number of small items, $100, $80, $90, $200, for which you have no source and nature made to a payee, and where it is not obviously to a supermarket, or it is not obviously to a landlord, a number of them, and you have indicated those as being unknowledgeable so far as source and nature is concerned; right?

A Yes.

Q Did you ever ask the bankrupt what they were for?

A These smaller checks that you are talking about?

Q Yes.

A No. Since they were not included in my tabulation I did not feel an urge to ask that.

Q You say they were not included. I am talking about those that were included, which you testified you could not tell source and nature.

Let me repeat: you have a number which you

said you assumed -- and I think that is the word you used --that they were for personal living expenses because it was made out to Grand Union, or to a landlord, and I guess you knew who the landlord was, or you must have had some way of finding out who the landlord was -- I am talking about other small checks which you could not assume they were for personal living expenses.

A At no point did I ever confer with Mr. Martin concerning the nature of any of the disbursements. I was restricting myself to the available books and records of the bankrupt.

Q Now, were you acting under instructions in that regard?

MR. RUBACK: Object.

THE REFEREE: Sustained.

MR. GARTLIR: Sir, --

THE REFEREE: Let's get something straight. The trustee retains an accountant pursuant to my order and the accountant goes in and does a job, and he does what he thinks he has to do pursuant to the order of retention, which is to make an audit, to find out if there are any grounds to object to discharge, to find out whether there were any preferences, to find out whether there were

any fraudulent transfers or other improprieties. He does not get any specific instructions.

Mr. Lautt is a very experienced accountant in bankruptcy matters specifically. It would be presumptious on anybody to tell Mr. Lautt what to do in a bankruptcy investigation.

MR. GARTLIR: In view of your Honor's statement I think I should be permitted a statement insofar as what I consider to be the law on the subject.

THE REFEREE: You can state what you think the law is in a brief.

MR. GARTLIR: I have already sone so, and I refer your Honor to the two cases that I cited which indicate that it is perfectly in order, in fact it may be required, for an accountant to inquire of the bankrupt to explain transactions that are not otherwise explainable, particularly where he is an individual. The Matter of Halpern --

THE REFEREE: It is not required of the trustee's accountant to do that at all.

MR. GARTLIR: If your Honor please, the trustee's accountant here was retained for the purpose of making a prima facie case --

THE REFEREE: I don't want to argue with you.

I have made a ruling.

MR. GARTLIR: In view of your Honor's statement I thought I would be permitted to respond to it, but if you do not wish I will proceed.

THE REFEREE: If you feel he may be criticized for not questioning the bankrupt, that is your privilege.

MR. GARTLIR: I did not say criticized. I think he may have a duty in order to make out a case here to investigate the bankrupt himself and inquire. When an individual draws a check for $100 for a suit of clothes he doesn't write in his check-book stub that it is for a suit of clothes. At least I don't and I am sure you don't. So when you say it is unexplainable, a hundred dollar item, I say it is not creditable in terms of keeping proper records.

If he said to the bankrupt "what is this for" and he said "I bought a suit of clothes", that's a very simple way of getting at it. There wouldn't be any voucher, there wouldn't be any bill, there wouldn't be any book of account.

THE REFEREE: All right, you made your point.

MR. GARTLIR: All right.

BY MR. GARTLIR:

Q Now, page 37 of the record, reference was made to checks payable to cash and cashed. The Referee in commenting on the testimony rephrased that testimony to say, and I quote, line 11:

"THE REFEREE: He said cashed. Cashed to me means that you go to a bank and turn it into cash."

Now, I ask you, Mr. Lautt, at the risk of clarification in this record, did you discover checks, and the year we have in question, and I can ask for another year, 1961 I think is the year in question, -- did you discover that the checks to which you referred as drawn to cash were actually cashed by the bankrupt or were they in fact deposited in an account either of the bankrupt or another account?

A I referred to checks drawn to cash. I think that's all I said about it.

Q Did you discover what was done with these checks? The Referee's comment on your testimony would leave the record indicating that they were cashed. I don't recall that you so testified. Now, perhaps, you can make it clear.

I assume there is a difference in your own analysis between a check that is cashed and one that is

deposited, turned into dollars or put into an account.

A There is a distinction in my work between a check which may have been drawn to cash on Bank A and deposited in Bank B of the bankrupt. That is not included in my cash because I have eliminated such identifiable transfers in effect whether the check was made out to Robert Martin or cash and then deposited in another checking account. They are not included in this item of cash.

Q What checks do you know were actually cashed, if you know, turned into dollars, that is, not deposited?

THE REFEREE: He said he did not take them into account.

MR. GARTLIR: He said he didn't take into account checks deposited.

I would like to know now what checks he did take into account that were cashed, if there were any that were actually cashed by the bankrupt.

The record seems to indicate everything he says, these checks were cashed. Your comments --

THE REFEREE: What page?

MR. GARTLIR: On page 37, line 12, your Honor.

THE REFEREE: His testimony was there were no checks that were actually cashed.

MR. RUBACK: May I give Mr. Lautt figures so

he may be able to find the record?

MR. GARTLIR: The Referee made a comment which may clarify it.

THE REFEREE: On line 12 I said: "He said cashed. Cash to me means that you go to a bank and turn it into cash."

Mr. Gartlir said:"Okay".

On line 15, the answer by Mr. Lautt was: "There were none."

MR. GARTLIR: That seems to be a volunteered answer.

THE REFEREE: That was not a volunteered answer.

THE WITNESS: There were none?

MR. RUBACK: Your Honor, may I suggest we also look at page 36?

THE REFEREE: That is just what I am doing. The question on line 4:

"Q Of this total of $1,071,461.31, how much was attributable to checks issued to cash?"

MR. GARTLIR: If your Honor please, down on line 23 it is made more specific.

MR. RUBACK: Let's go to line 21.

THE REFEREE: Then we go to 21 corrected to

$56,581.16, was the answer that was given.

Then line 22:

"Q Of this $1,071,461.31 how much was attributable to checks issued to the bankrupt as payee and cashed by him?"

Now, that was the question.

MR. GARTLIR: Now, is that the answer --

THE REFEREE: The answer to that question is on line 15 of page 37.

MR. GARTLIR: "None."

Could I have the witness' answer?

THE WITNESS: None were cashed, is that my answer?

THE REFEREE: That was your answer, but I want you to know that between the question and the answer there was --

Mr. GARTLIR: A lot of colloquy.

THE REFEREE: A good deal of colloquy, and if you want to change that now you may.

THE WITNESS: Well, certainly the answer "none" is not correct, it is not a correct answer to the question as to what amount was cashed.

THE REFEREE: On page 38 the question was asked you again: "Were there any checks issued to

the bankrupt as payee and cashed by him of this 729 thousand.

MR. GARTLIR: That's a different year, your Honor.

THE REFEREE: Is that a different year?

MR. GARTLIR: Yes, it was. I was only referring to the year in which there was confusion.

THE REFEREE: I don't know what year the testimony on page 37 refers to.

MR. RUBACK: 1961.

MR. GARTLIR: 1962. At the bottom of page 37 it says 1962.

All right, so we have that clear.

Now, the only clarification I would like for this record is the prior year 1961, and the Referee has pointed out that the answer on line 15 on page 37, "There were none" responds to the question on the previous page as to what checks in that year were drawn to cash and actually cashed by the bankrupt.

Do I understand that to be your statement, Mr. Referee?

THE REFEREE: The only thing that troubles me are the years.

MR. GARTLIR: I think we can get that straight.

THE REFEREE: Don't forget, this has not been before me for -- how long?

MR. GARTLIR: Two years. Yes, it is 1961.

THE REFEREE: On 35 we talk about 1961 and the question was: "Was the grand total of all checks issued by the bankrupt in '61 $1,379,000."

MR. GARTLIR: Right.

THE REFEREE: Now, let me follow it up.

Then the question put to him: "Of this total of $1,071,000 how much was attributable to checks issued to cash".

Then the question was read to the witness and the witness answered on line 21 by saying $56,581. was issued to cash.

Do you follow me, Mr. Lautt?

THE WITNESS: I do, sir.

THE REFEREE: Then you are asked again now: Of the $1,071,000 how much is attributable to checks issued to the bankrupt as payee and cashed by him -- as payee and cashed by him.

MR. GARTLIR: That's right.

THE REFEREE: The answer to that one is "none".

MR. GARTLIR: That's right.

THE REFEREE: That's where we slipped up.

MR. GARTLIR: I won't slip up, I hope.

BY MR. GARTLIR:

Q Can you tell me then how many checks in that total that year were issued to cash and cashed by the bankrupt, if you can?

A The number of checks?

Q No, the dollar amount.

A $56,581.16.

Q How do you know they were cashed by him?

A Those were issued to cash.

Q How do you know they were cashed by him?

A I didn't say they were cashed by him.

Q Isn't that my question?

A Oh, I am sorry.

Q My question was, cashed by him.

A I would have to go over --

THE REFEREE: They were drawn to cash and cashed, but they may have been cashed by somebody else. Is that your point, counsel?

MR. GARTLIR: They may have been. I don't know.

A They may have been cashed by somebody else. I would have to go through the checks now to answer that

question.

Q You say, some were cashed by him, I assume?

A I don't think I said that as yet.

Q You don't know. They were cashed by someone, is that right?

A They were issued to cash, and I believe I couldn't determine whether there was any part that eventually, or any one check, that went into somebody else's account, but there may have been some. I merely in this tabulation show what checks were issued to cash. I have testified as to nothing as to the disposition of that check, whether it was cashed over the counter or given to some party, or disposed of in some other place other than being deposited in an account of Robert Martin.

Q Then you don't know now, or you didn't then know whether any of them were actually cashed by anyone and turned into dollars?

A I probably did know at the time. I don't know now. I would have to now review those checks in order to answer your question to see whether I could tell by examining the checks whether they were cashed over the counter -- it is a difficult thing many times to come to that determination by looking at a check whether it was actually cashed over the counter or deposited in somebody's

account, or negotiated in some other fashion.

Q All right, but your previous testimony where you answered "none" in two instances, in 1961 and '62 relates to the fact that you do not have in your record any indication that any checks in these years drawn to cash were cashed by the bankrupt?

A I think we are getting back to the same thing where I said "none", it is checks issued to Robert A. Martin.

Q I see. Okay, I will accept that. None cashed by him drawn to Robert A. Martin and you don't know with respect to checks drawn to cash as to (a) whether they were turned into cash, and (b) by whom?

A At this point I do not know, at this time.

Q Now, throughout your testimony you did give some figures in each year of the checks you were able to tell the source and nature. I don't refer to specific dollars but if you look at the record you may recall that in each year there was a certain dollar amount you testified to, and you said, "Yes, I can tell the source" -- and you were very careful to say "and nature of checks". Correct?

A Yes.

Q I am not now referring, if you will, Mr.Lautt,

to a check drawn to Grand Union.

A There were notations on checks, as, for instance, in 1961 I have a total of $57,989.44 of checks identified as to nature by notations on the checks.

Q On the checks?

A On the checks.

Q And you used that as your source and nature?

A That's right.

Q Do you know when those notations were put on?

A No.

Q Did you inquire?

A No.

THE REFEREE: I will take a recess of five minutes.

MR. GARTLIR: Thank you.

(Recess taken at 3:00 P.M., and hearing resumed at 3:10 P.M.).

CROSS EXAMINATION CONTINUED BY MR. GARTLIR:

Q Did you ever see check book stubs, Mr. Lautt?

A No.

Q Did you ever ask for them?

A No.

Q Did you ever ask for any records other than those furnished to you by the trustee?

A I did not.

Q Now, Mr. Lautt --

A Oh, I want to qualify that. I believe early in the case I spoke to Mr. Martin about any records he might have, and as I recall I think he delivered some records to us. So I did speak to him about records that he might have on his own person or at home or any other place.

Q Did you ask him about check book stubs?

A I asked him for all his records.

Q Well, I referred specifically to that.

THE REFEREE: He answered you.

A No, I don't think I asked him specifically.

THE REFEREE: He didn't ask him anything specific. He said "have you any records".

Q Did you ask him about notations on checks?

A No.

Q I am talking about following your analysis when you testified from your records that you could not tell the source and nature of certain checks but you could tell those which had notations on them?

A That's right.

Q Now, you have referred to a group of stock confirmation slips, and at my request you just handed them to me, and I ask you whether these were all the slips

that you had in your possession when you made this analysis, the ones you just gave me?

A (Witness examines same). I believe they were -- I believe they are.

Q Wasn't there a bound stock confirmation folder?

A I think with Tracon there were some bound records.

Q Just with Tracon?

A To the best of my recollection.

Q Let's take them one at a time.

Was there a bound group of stock confirmation slips of Robert A. Martin?

A It is my recollection that these are the only ones I have.

MR. GARTLIR: Let me have these marked as one exhibit.

MR. RUBACK: No objection.

(Batch of stock confirmation slips of Robert A. Martin marked in evidence as Bankrupt's Exhibit I).

Q Now, did you examine the bound group of memos that you referred to as being related to Tracon?

A I did.

Q And that is the one you testified was reflected

in the checks for which you assume there was a purpose, is that right?

A Yes.

Q How about Century, the same?

A I had nothing on Century.

Q There were no records regarding Century that were delivered to you?

A That's right. Among the bankrupt's books and records I could find nothing there with regard to Century.

MR. GARTLIR: If your Honor please, in connection with the question I put prior to the recess it has been called to my attention when I referred to the fact that the bankrupt was compelled to file as a business broker, it has been brought to my attention that there was an order entered that required that filing.

THE REFEREE: Not to file as a business broker. I have not seen the order and I don't know what the order says but I would never tell him to file as a business broker. I told him to file an amended schedule if I told him anything.

MR. RUBACK: I can explain it. The bankrupt originally filed a Statement of Affairs relating to one who was not engaged in business.

Following examinations at the adjourned first meeting the bankrupt testified, or during those examinations the bankrupt testified that he was in business. Accordingly motions were made to compel the bankrupt to file a statement of affairs for one engaged in business, and he filed this Statement of Affairs.

THE REFEREE: I am sure I did not tell him what to put in it.

MR. RUBACK: Certainly neither you nor I told him what to put in it. He was merely told in view of his testimony to file a Statement of Affairs as one engaged in business.

MR. GARTLIR: Was an application made to the Court?

MR. RUBACK: Yes.

MR. GARTLIR: On notice?

MR. RUBACK: Yes.

MR. GARTLIR: And was an order entered?

MR. RUBACK: Yes.

MR. GARTLIR: An order was entered.

THE REFEREE: To file a Statement of Affairs, but you are saying he was instructed to file as a business broker.

MR, GARTLIR: No, your Honor.

THE REFEREE: That is what you said several times. He was not instructed, he was compelled to file schedules.

MR. GARTLIR: That's what I am saying.

THE REFEREE: Of course he was. I am required to make him file schedules by law, and he is required, he is under a duty to file schedules.

MR. GARTLIR: Yes, but the question is the character under which he filed, as to whether he was or was not a business broker.

THE REFEREE: Not as a business broker. He was told to file schedules as one engaged in business because his testimony indicated that he was not working for a salary, as a consumer, as a laborer, as a workingman. He was engaged in business and he filed the wrong kind of schedules. Now, if he wanted to describe himself in there as an aviator he could have done so.

MR. GARTLIR: May I have a moment, your Honor?

THE REFEREE: Yes, you may.

MR. RUBACK: May I have a moment to clarify something? I don't want to pursue this but I think it might be important to have it clarified

for Mr. Gartlir, the question of why the bankrupt filed as a business broker.

If you read from the bankrupt's testimony on February 1, 1966, on page 38, which shows:

"Q Now, in your Statement of Affairs you state that you have been a business broker, is that correct?

"A That is correct.

"Q And you also state that you have been self employed as a business broker, is that correct?

"A That is correct.

"Q How long have you been employed as a business broker?

"A I would say approximately the end of 1962, early 1963, let's call it, to 1964.

"Q The end of 1962 to early 1964?

"A To the middle, towards the end of 1964, a little over a year.

"Q What did you do as a business broker?

"A I tried to find companies, acquisitions, mergers, financial consulting fees.

"Q Did you find such companies?

"A We found many things, yes."

Now, I don't think I need go on. This was

the bankrupt's testimony in early 1966, and to have the bankrupt now state to this Court that he was compelled to state that he acted as a business broker is a charade.

MR. GARTLIR: I must respond, if your Honor please.

It is our contention that this man was an individual stock trader and he performed work as a business broker for a period of a little over a year. It isn't of necessity that he becomes a business broker for the purpose of filing schedules or a Statement of Affairs. He filed originally as an individual. An application was made to the Court --

THE REFEREE: He can file as an individual both ways. It is a printed form. One is made for a bankrupt or debtor engaged in business. One is for a bankrupt or debtor not engaged in business, that is a man working for a weekly salary. This man didn't fit into that category.

MR. GARTLIR: That is not quite accurate, your Honor. He was employed.

THE REFEREE: By whom?

MR. GARTLIR: Robert A. Martin Associates, Inc.

was his employer.

THE REFEREE: This is not the point. You are getting away from the point.

MR. GARTLIR: If I may have a minute to make the point which I haven't made yet. If your Honor will hear me. If you won't hear me, I won't be heard.

If I may be permitted I may introduce into evidence as Mr. Ruback's postscript, he was reading from page 39, line 7:

"Q Did you earn any money as a business broker?

"A Very little.

"Q Did you earn any?

"A Yes, a few thousand dollars."

Now I will go ahead with the case.

BY MR. GARTLIR:

Q In connection with the Bankers Trust Company account referred to on page 39 of the transcript, down at the bottom, line 23, I asked you at that time in response to a question whether you were unable to identify the 148 thousand dollars worth of checks by reason of the fact that you didn't get any cancelled vouchers or checks, and you said "that's right". Do you recall that

testimony?

A I have a recollection of it, yes.

Q So, in other words, you took 148 thousand dollars from some other document as being unexplained as to source and nature, is that right?

A I took it from a transcript, a bank transcript of his account with the Bankers Trust.

Q A statement, so to speak?

A That's right, the bank statement.

Q And you didn't have any checks?

A I had nothing on the account besides that statement.

Q Now, you had batches of checks of Robert A. Martin Associates, Inc., or don't you know?

A I don't know offhand. Let's say I did. I don't know offhand.

Q Did you look at those checks for Robert A. Martin checks of the Bankers Trust Company?

A What we did originally, as the books and records kept coming into our office I assigned a man from my office to separate the books, the records of the corporation from the records of the individual, and the records of the corporation were set aside then and I worked on the records of the individual.

Now, what records, as I think I testified previously,--

I made no real examination of the records of the corporation. I didn't go into them. I didn't look at them generally.

Q I understand that. We have got that clear, you did not look at those records at all.

A Just casually. I think I looked at the general ledger. They had a general ledger for '62. I looked at that. If I recall, I think I testified as to that previously.

But as to the volume, the cartons of stuff, we had a four-drawer steel file, we had many blotters of the corporation, but I didn't go into it. I was interested only in the records of the bankrupt.

Q But you did look at the records of the corporation, you say you just glanced at it. Did you by any chance look at it for any transactions you saw in the bankrupt's records?

A No.

Q No?

A No.

Q And that was a determination that you made yourself, that is to say, not to look at the corporate records?

A It was a determination I made myself. Probably --

I can't be too sure -- I may have spoken to counsel about it but I have no recollection of it. I probably did make it myself but I am not too certain.

Q Mr. Lautt, were you asked to ascertain whether there were any assets of the bankrupt estate, or did you in connection with your duties in your retainer seek to determine whether there were any assets of the bankrupt estate?

A I think the records were such that it would be difficult for me to come to any definitive answer as to what his assets were from his books.

Q In the original Statement of Affairs and statement of debts and assets there is a reference to assets in the hands of others. Did you know that? I refer to Tracon and Century.

A Well, our attorneys were fully aware of that.

Q And you were not asked to nor did you examine into that?

MR. RUBACK: Object.

THE REFEREE: Sustained.

MR. GARTLIR: That is all I have at this moment.

THE REFEREE: Anything further?

MR. RUBACK: Just one question.

REDIRECT EXAMINATION BY MR. RUBACK:

Q Mr. Lautt, at the last examination you testified that there were deposits totalling $2,843,126.31 for which you could find neither the source or nature. That answer was given on page 54.

Do I understand correctly that that sum represents a figure for which you could find neither the sum nor the nature of the moneys deposited?

MR. GARTLIR: Source, I think.

Q Did you find neither the source nor the nature?

A Where I found a source,there was some indications of source that are not included in this figure of $2,843,000.

Q Were there deposits where you found the source but not the nature?

A That's right.

Q What is the total of those deposits?

A $604,485.13

MR. RUBACK: No further questions.

THE REFEREE: Anything further?

MR. GARTLIR: Yes, your Honor.

RECROSS EXAMINATION BY MR. GARTLIR:

Q I take it, Mr. Lautt, you did not look at

the records of Robert A. Martin Associates, Inc. to determine the source or nature of any of those sums including ledger sheets that had reference to Robert A. Martin?

A The ledger sheets that had reference to Robert A. Martin, I believe there was one subordinated loan account in the general ledger for '62 which had a carry-forward balance from a prior year, which ledger I didn't have.

There was also what we call a loan and exchange account, I believe, with Robert A. Martin with very minor and trivial sums, and I --

Q How many pages was that in the book?

A The subordinated loan account was one --

Q No; the exchange account.

A The exchange account I just don't recall how many pages.

MR. GARTLIR: Could we have that in Court the next time, Mr. Ruback?

Q Those pages from the ledger account which you say were minor, the exchange account, did you perform any work on that or perform any work sheets?

A No. I said I disregarded it because of what seemed to me to be the utter insignificance of the amounts.

Q How about the work sheets that were with those books? Were there work sheets there particularly

particularly in connection with this exchange account?

A I don't recall seeing any.

Q If there are any, may we have those too, the work sheets, the accountant's work sheets?

A My work sheets on that or some other accountant's work sheets?

Q Mr. Martin's accountant's work sheets relative to those exchange accounts. Biller & Snyder were the accountants at the time. There are work sheets and trial balances that went with those books.

A If there are work sheets of the accountants for Robert Martin Associates I will bring them.

MR. GARTLIR: Okay.

MR. RUBACK: Do I take it, therefore, that you desire to continue your cross-examination?

THE REFEREE: No. You will not continue anything. You waited two years to get to this today. The cross-examination is concluded.

MR. GARTLIR: I didn't wait two years, your Honor, to get to this today.

THE REFEREE: I didn't say you did.

MR. GARTLIR: I just wanted to make the record plain.

THE REFEREE: I used the first person plural.

MR. GARTLIR: I am sorry. I withdraw my comment.

THE REFEREE: You may step down, Mr. Lautt.

(witness excused)

MR. RUBACK: At the very outset, your Honor, you asked me to indicate when we would be through with certain specifications.

THE REFEREE: Right. We were on specifications 1 and 2 until now.

MR. RUBACK: That's right. No further direct examination or redirect examination with respect to specifications 1 and 2.

THE REFEREE: You rest on them?

MR. RUBACK: Yes, your Honor.

THE REFEREE: Do you want to proceed?

MR. GARTLIR: Do you wish me to address myself to the prima facie case now on my defense on 1 and 2, or should the trustee go forward.

THE REFEREE: I take each one separately.

MR. GARTLIR: If your Honor please, I would like to be heard briefly on this.

THE REFEREE: Go ahead.

MR. GARTLIR: I respectfully move to dismiss insofar as these particular specifications are

concerned, on the following grounds:

The specific section with which your Honor, of course, is familiar, and I will only quote it in part, requires the Court to grant a discharge unless satisfied that -- and I omit what I do not believe was raised in these specifications -- the bankrupt has destroyed, mutilated, falsified, concealed or failed to keep or preserve books of account or records from which his financial condition and business transactions might be ascertained, unless the Court deems such acts or failures to have been justified under all the circumstances of the case.

Obviously the trustee has the obligation of establishing prima facie that there are reasonable grounds for believing that the bankrupt has failed to keep or preserve books of account or records from which his financial condition and business transactions might be ascertained, because the circumstances of each case determines whether the Referee can decide whether the bankrupt has or has not complied with the requirement to keep such records.

I stress, of course, and I think the cases are clear, no requirement that records be kept in

a certain manner, or that certain kinds of records be kept -- International Shoe Co. case which I cited -- so long as the records are kept from which the bankrupt's affairs might be ascertained, and the bankrupt has complied with the statute.

First of all, there is no doubt I think from this record so far that the bankrupt has complied with that requirement that he turn over all records. We have put in evidence a receipt which is rather voluminous and which covers all the records that he did have.

I will go back to that in a moment, your Honor.

So I don't believe the question of good faith in failing or refusing to turn over records is an issue in the case.

I think the sole issue that is before the Referee at this moment is whether he kept such records from which his financial affairs might be ascertained.

Now, coming to that, the disclosure of what he has together with the accessibility of other records is something that I think the Court is required to take into account.

If the trustee and the accountant here are going to be limited in determining the legal question before the Referee to only the specific records of Robert A. Martin as the individual, that is one thing. It is my contention that they are not, and that in the reasonable and proper administration of the investigation of the bankrupt's affairs that the trustee and his accountant has a duty of looking at other records as well, including the following:

(1) The fact that the bankrupt was the principal stockholder of a company called Robert A. Martin Associates, Inc. which had other substantial records, is a fact that must be taken into account if the trustee and his accountant were truly seeking to determine whether there were records from which the financial affairs of the bankrupt could be ascertained.

Now, lest it be thought that I am pushing this a little too far there are cases which I have cited which indicate that where there is a close relationship between the bankrupt and a wholly owned corporation, or one which is principally the organ of his business, that the Court will require that

those records be brought before the Court, or at least be used in an effort to make an entire picture explainable.

There is more. It is obvious from the 21a proceedings which lasted here over a period of three years, consisting of 19 meetings, that the affairs of this bankrupt were gone into at exhaustive length, and it is quite obvious also that a substantial part of his business was done not only with Robert A. Martin Associates, Inc. but with two major companies called Tracon and Century, and he had stated in his papers on file in this Court that his records, such records as he kept, were also in the possession of Century and Tracon, those records being a record of accounts with them which explains in writing transactions in which he engaged.

The question the Referee will have to determine, and I press upon him, that there is a further duty on the offer of the bankrupt for certainly some reasonable requirement to make inquiry of Century and Tracon as to what their records show, or to subpoena those records, which were no longer within the physical or legal control of the bankrupt.

THE REFEREE: Who were those records kept by?

MR. GARTLIR: Century and Tracon.

THE REFEREE: A record they made in their books.

MR. GARTLIR: That is correct, your Honor. But I don't believe that the statute is so strictissimi juris, that it says you may not look at any record except a record kept by the bankrupt.

Let me come back to that again for a minute, and I promise not to be too long.

I think significant here although the case is in large numbers -- the accountant has testified that millions of dollars of transactions -- is what was this man? What was he doing?

I recognize this matter of having filed as a business broker. I say to your Honor that the record will indicate that he was an individual stock trader, an individual stock trader. He was engaged in the business of a business broker for a year or so before he filed a bankruptcy proceeding, that is admitted. But the bulk of his transactions to which reference has been made in this case relate to this man's operations as a stock trader as an individual, aside from his corporate operation

to which nobody has paid any attention.

All right, let's come to the individual then. What records does an individual keep even within the meaning of the Bankruptcy statute?

I referred your Honor before to the fact that an individual who draws a check on his personal checking account does not even put in his stub what it is for, and I would defy any individual, stock trader, lawyer, accountant, individual person, to be able to tell this Court what his transactions were four years ago from a physical record, a bound record. It doesn't exist. It doesn't exist for me, it doesn't exist for you, it doesn't exist for anybody. But there are records here. It isn't a question that there are no records. The question is whether those records are sufficient to determine what we have to determine.

Now, what do we have to determine? We have to determine, we have to see whether there are transactions that can be explained, and I say they can be explained.

Of course, it may be that the accountant was not zealous, with all due respects to the accountant, in going to the other records. Maybe his

instructions were not to go to other records. I don't know.

Now, I read the petition here, which I looked at this week for the first time, of the employment of this accountant, and which has been deemed in evidence. I don't find anything in the retention of this accountant which excludes anything I have just said. It doesn't say in here that he is not required to do any of these things.

As a matter of fact his retention here does not specifically relate to the investigation of books and records for the purpose of specifications to a discharge which arose three or four years later.

I don't suggest that his duties don't fall within the scope of his being retained. I am just urging upon your Honor that if this man was to be given a chance to explain he should have been given a fair chance to explain.

Is it unthinkable that an accountant in trying to reconstruct a man's affairs, or find out what he did from a thousand checks, and he sees a check for $200, $600 and $400 to a named individual, that he says to the man, "what is it for"?

Your Honor may say, no, the statute does not require that he go to him. I say that the case law indicates, and I have cited Jackman v. Hammer in the Second Circuit. I have cases in my memorandum which say that such records together with the explanations of a bankrupt must be taken into account.

My questioning of this accountant as well as the prima facie case indicates they did not make such inquiry of the bankrupt even to explain the most elementary transactions in the books, our own transactions as individuals when we buy a suit of clothes or what not.

Certainly the major items, and I look at that exhibit, and I can pick them out in a minute, the large items, the 50 thousand dollar items, the 40 thousand dollar items, are with known stock-brokerage houses, or with Tracon and Century, which was part of what he was doing. These are almost self explanatory. If we went to get another record we would find it. Maybe nobody wanted to get another record. It is entirely possible.

In substance, your Honor, I also have this one further thing to say. The Statement of Affairs

here shows that claims were listed in excess of a million dollars, I think. Claims were filed somewhere in the neighborhood of 460 thousand dollars. Those claims have been reduced over the last two years at the work of the bankrupt's counsel and the bankrupt together with the cooperation of the trustee and his counsel, to 350 thousand dollars --

MR. RUBACK: Would you repeat that statement? I am sorry.

MR. GARTLIR: Claims have been reduced to 360 thousand dollars, approximately -- I think it is 359 thousand dollars.

And of those claims I call your Honor's attention to the fact that the major ones are still with Tracon and Century, and one or two creditors, the same ones that are related in these schedules.

If there is any disposition to find a way to have an explanation of a bankrupt's records, the sources exist, they are here. The bankrupt who was examined for three years is here. Such case could easily have been established.

MR. RUBACK: I simply want to say that I think Mr. Gartlir is picking up some of the minor things and overlooking the major ones.

For instance, Mr. Lautt has testified that during the year 1960 he could not determine the nature of disbursement of checks totalling $362,107.20. We assumed that this included some hundred dollar checks. The thing goes beyond reason to assume that they totalled that sum.

Another question: in the year following, I asked Mr. Lautt: were you able to determine the nature and purpose of disbursements indicated by these checks which total $1,181,492, and Mr. Lautt testified that to the extent of $451,791 leaving a balance which I could not determine the nature or purpose of the payments in the amount of $729,701.14.

So we go beyond hundred dollar figures that Mr. Gartlir with such great oratorical power said I should know, he should know who issued checks for clothiers, etc. We don't keep any records.

Those are not the type of checks we are really interested in. I think Mr. Gartlir knows that. He has been given every opportunity to go through the record submitted by the bankrupt. He was there as late as Tuesday. No time was he refused access to the records that the bankrupt had which were turned over to us.

I think the Court will understand that Mr. Lautt has not destroyed one single memorandum or slip and they are all available. No attempt has been made to show that the records which were turned over, even of Robert Martin Associates, would reflect this bankrupt's condition. It is not the duty of the trustee to do that.

I respectfully recognize that this Court has too much experience, and I say this with deep conviction, on these sort of cases, so I am not going to quote and cite a great deal of law.

I will submit a memorandum citing one case. I am sure that your Honor of his own knowledge has many many more which he knows.

The trustee rests.

THE REFEREE: The motion to dismiss is denied.

I am going to set it down for an afternoon and the burden now shifts, not the burden of going forward, the burden of proving that he kept adequate records falls entirely now upon the bankrupt.

Off the record.

(Discussion off the record).

THE REFEREE: November 10th at 10:30 and we will hold the day.

(Adjourned to November 10,1971, at 10:30 A.M.).

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Appearances (continued):

Messrs. HOFHEIMER, GARTLIR, HOFHEIMER, GOTTLIEB & GROSS,
Attorneys for Bankrupt,
61 Broadway,
New York, New York
By: BERNARD GARTLIR, ESQ., of counsel

Also present:
SIDNEY C. LAUTT, C.P.A.
Accountant for Trustee.

- - - - -

THE REFEREE: Proceed, please.

R O B E R T A. M A R T I N, residing at 17 Springhill Drive, West Orange, New Jersey, called as a witness on behalf of the bankrupt, having been first duly sworn by the Referee, testified as follows:

DIRECT EXAMINATION BY MR. GARTLIR:

Q Mr. Martin, you are the bankrupt in this proceeding, are you not?

A That is correct.

Q I first ask you to tell the Court what your occupation was prior to the filing of the petition in bankruptcy, giving me please, if you will, for the period from 1961 through the date of the filing of the petition in 1965?

A From 1961 until part of 1965 I was employed by Robert A. Martin Associates, Inc., a registered broker-dealer. I was president of that corporation and a stockholder of the corporation.

Q I will refer to that again shortly.

Now, will you tell the Court, please, what your occupation was until the date you referred to in 1964 until the filing of your petition in bankruptcy in 1965?

A During that time I attempted to engage as a business broker dealing in mergers and acquisitions to a very limited extent over this period of time.

Q Now, you referred to the fact that you were the president and a stockholder of Robert A. Martin Associates, Inc. in the period which you just referred to, 1961, 2, 3 and 4. Will you tell the Court what the business of that company was?

A Robert A.Martin Associates, Inc. was a registered broker-dealer engaged in general securities business with primary emphasis of underwriting new stock issues.

Q What was your interest in the company?

A I owned approximately 80% of the stock and I was president of the company.

Q Who owned the other stock in the company?

A The other stockholders were Stanley Hilton, Louis Volkamer and Arthur A. Hilton.

Q And where was the business of the company conducted?

A 680 Fifth Avenue, New York City.

Q Did it maintain an office there?

A It did.

Q Is that where you engaged in the activities on behalf of the company?

A That is correct.

Q How extensive was the office? How many employees did the company have?

A Approximately 32.

Q Did you maintain any other office other than the one you just referred to?

A No.

MR. RUBACK: Your Honor, I will object at this time to the questioning. I see no purpose unless Mr. Gartlir would like to elucidate as to the purpose or the reasons for this type of examination.

THE REFEREE: Overruled.

Isn't the objection that he failed to keep proper books and records?

MR. GARTLIR: Yes.

THE REFEREE: The nature of the business and the kind of business he ran is very very material. If he was a plumber he would require one set of

books. If he had 32 employees running a brokerage business he would require a different type of books, a different set of books.

I think this is very material.

All right, proceed.

Do you want the question read?

MR. GARTLIR: I do want to comment on your last comment, if I may. I think the testimony is important, I agree, and I would not want your Honor's statement to go unchallenged in light of what you just said, namely, that he maintained 30 employees.

THE REFEREE: I didn't say he maintained them. I said that any bankrupt who had 32 employees would require a certain set of books.

MR. GARTLIR: Absolutely right. I am sorry, your Honor, I misunderstood.

THE REFEREE: What his actual activities were financially, and how involved he was in business and income, and receipts and disbursements, investments, borrowings, lendings -- all those go to the question of what kind of books does he have to keep -- what books would a reasonably prudent man under the same circumstances keep.

MR. GARTLIR: We are in agreement, your Honor.

THE REFEREE: Very well.

MR. GARTLIR: May I have the last question?

(Last question and answer read by reporter).

BY MR. GARTLIR:

Q Mr. Martin, were you personally engaged in any business other than your employment as an officer and stockholder of the company?

A Not at this time, no.

Q And up until the date you testified to in 1964?

A That is correct.

Q Did you have your name on the door?

A No, I did not.

Q Now, you referred to the fact that the business of this company was a broker-dealer. What were your duties, what were your functions; what did you do specifically as president of this company?

A I was charged with the over-all responsibility of managing the company's day to day operation, and most of my time was spent with seeking out potential companies for underwriting by Robert A. Martin Associates, Inc., conducting some commission business through the corporation, and in addition arranging interim finance loans

for companies prior to their going public.

Q Was the company licensed with the Securities & Exchange Commission?

A Yes, it was.

Q Were you licensed with the Securities & Exchange Commission?

A Under what is called the umbrella of Robert A. Martin Associates, Inc. The Commission does not actually license individuals, only partnerships or corporations, and I worked for the corporation.

Q How were you compensated for your activities on behalf of the corporation?

A I was paid a salary by the corporation.

Q On a regular basis?

A Yes, every week.

Q Coming to the immediate period of 1964 until you filed the petition in bankruptcy, that is that period of time relatively short, I assume, in which you engaged in some other activity, what was the status of the corporation during that period?

A From late 1962 the corporation ceased to do business as a broker-dealer, its working capital had been impaired and I spent most of my time liquidating, or helping to liquidate the corporation, seeing that customers'

securities were delivered, credit balances, seeing that the books and records were closed out, a final return was filed, and just a general wind-up of the corporation.

Q Did you receive salary or compensation from the company during that period?

A From the time of 1963 on, I believe, the corporation was not able to pay any compensation to me, and I had to sustain myself on whatever bits of capital I had left at that time.

Q Now, Mr. Martin, I ask you this question: Did you engage in transactions with the company yourself, personally -- Robert Martin -- engage in transactions with this corporation?

A Yes.

Q Will you describe to the Court, during the period in question --

MR. GARTLIR: May it please the Court, during the period in question, and I am referring specifically to the period during which debts and creditors' rights accrued in this bankruptcy proceedings, and may we refer to that period for shorthand purposes from 1961 to part of 1963, and the record will indicate that is the period of time during which these debts arose which have

been filed in this bankruptcy which is the concern of this bankruptcy.

Q Do you remember my question?

A No. Could you read it back?

THE REFEREE: He wants to know what transactions you engaged in with the corporation between 1961 and part of 1963, during which the debts which are part of this case arose; what transactions you personally had with the corporation.

Am I correct, counsel?

MR. GARTLIR: Correct.

A I conducted an extensive personal trading account much of which was conducted through Robert A.Martin Associates, Inc. acting as a broker for my transactions, and then in addition because of net capital requirements of the Securities & Exchange Commission I was put into the position of having to advance substantial sums of money as loans to potential companies for underwriting issues. The reasons the loans had to be advanced by me so there was not a net capital deficiency from the broker-dealer corporation.

Q Do I understand you to say that there was a legal requirement that you had to make the advances

rather than the company?

A It wasn't a legal requirement for me to make the advance, but had the corporation advanced it it would have had put them in a capital deficiency position, and either some officer or some entity outside of the corporation would have to make the loans and be liable for the loans.

Q Is it a fair statement to say in that regard you acted on behalf of the corporation?

A Yes.

Q Now, during the same period, Mr. Martin, tell the Court, please, first, what records, personal records of any kind, you had or maintained for yourself?

A The records I maintained were the original purchase and sale confirmations from brokerage firms, cancelled checks, some correspondence, some paid bills, and occasionally some contracts or letter agreements pertaining to underwritings.

Q May I refresh your recollection, Mr. Martin?

A Yes.

Q Did you also have broker statements?

A Yes, I had the monthly brokerage statements that were a recapitulation of the purchase and sale tickets that I mentioned, and in addition I maintained a folder

of credit and debit memos from stock factoring companies who were financing my trading operations, which showed the flow of money in and out of my account, all interest charges, all service charges.

Q Did you also maintain a paid bills file?

A Yes, I did.

THE REFEREE: He said he kept some paid bills.

THE WITNESS: Yes, I mentioned it.

Q I am sorry, I did not hear you say that.

How about income tax returns?

A I kept those, yes.

Q And where did you keep those records; where did you keep them physically?

A At Robert A. Martin Associates, Inc. and some of the records were at my accountant's office, Hertz & Herson.

Q Now, I ask you to tell the Court what kind of records were maintained by Robert A. Martin Associates, Inc.?

A Robert A. Martin Associates, Inc. maintained a full set of records as required by all of the regulatory agencies, which consisted of general ledgers, purchase and sale blotters, cash disbursements ledger, check book, check stub books, all correspondence, all paid

bills, tax returns, etc.

Q Payroll?

A Payroll books, yes.

Q Dividend ledgers?

A Dividend ledgers.

Q And security ledgers?

A Security ledgers, yes.

Q Where were they maintained?

A At the offices of Robert A.Martin Associates, Inc.

Q Did you have an accountant or an auditor?

A Yes, we had an auditing firm, Biller & Snyder.

Q And were the accounts of Robert A. Martin Associates, Inc. audited on some kind of regular basis?

A Yes, at least two regular audits and one surprise audit each year.

Q One what?

A Surprise audit.

THE REFEREE: Spot check. They would come in when he wasn't looking.

Q Now, at the time when you filed your petition in bankruptcy what disposition was made to your knowledge, Mr. Martin, of your own records? Where were they? What happened to them? Who got them, and explain the circumstances to the Judge.

A Most of my records were shipped with the records of Robert A. Martin Associates, Inc. to the Hahn Warehouse in the Bronx, New York. Some of my records were still with my accountants, Hertz & Herson, and a few of my records were in my possession at home. Most of those related to 1964 or 1965.

Additionally, many of the records that I often relied on in filing tax returns were in the possession of Tracon Corporation who kept ledger books relating to my entire account, and Century Industries kept a complete record of my transactions with them through Artia-Parliament Industries, Inc.

In addition, some of my records had been subpoenaed by the Attorney General's Office and as I testified previously in the case insolving Mr. Ruback's firm, by the District Attorney's office.

Q When, to your knowledge, were these records turned over to the trustee in this proceeding?

A I don't remember the exact date. I think it should be on the receipt, but it was shortly after the petition was filed, I believe.

MR. GARTLIR: If your Honor pleases, the witness is referring to a receipt which is in evidence and it is an important part of my case

that the receipt be further identified by the witness.

BY MR. GARTLIR:

Q I show you Exhibit D in evidence -- I believe it is D -- and ask you if this is a list of the records, documents and other papers to which you just referred?

MR. RUBACK: May I see it first, please?

MR. GARTLIR: Yes (handing same).

MR. RUBACK: Is it in evidence in this proceeding?

MR. GARTLIR: My recollection is that in the very early stage in this proceeding, as well as in an earlier one, this receipt was marked in evidence.

MR. RUBACK: I have no objection to it if you want to mark it in evidence. Let me see if it is in evidence.

MR. GARTLIR: It would appear that this document was marked a couple of times.

THE REFEREE: Batch of receipts.

MR. GARTLIR: May I come up and look at it?

THE REFEREE: Off the record.

(Discussion off the record).

THE REFEREE: Batch of receipts referred to

marked in evidence as Exhibit D.

MR. GARTLIR: What is the date of that transcript?

THE REFEREE: May 26, 1969.

MR. GARTLIR: Then it is in evidence.

THE REFEREE: Off the record.

(Discussion off the record).

THE REFEREE: Let the record indicate that Exhibit D introduced in evidence on May 26, 1969 is a batch of receipts for books and records turned over to the trustee in bankruptcy by the bankrupt, and they bear various signatures -- I don't know whether you want to go through them all -- but some receipts are signed by a representative of Nachamie & Benjamin, some are signed by somebody from Levy, Levy & Ruback, some are signed by someone also from Barton Nachamie's office by the name of Fanny Roman.

Does that identify them sufficiently?

MR. GARTLIR: Yes.

THE REFEREE: Very well.

BY MR. GARTLIR:

Q I take it, Mr. Martin, that is the records, the total sum of the records that were turned over

pursuant to the signed receipts?

A As far as I know, yes.

Q Are there any other records of any kind which you have and which you have not turned over to the trustee's counsel or to the accountant?

A There are not.

Q What was the disposition of the records of Robert A. Martin Associates, Inc.?

A Those records were also delivered to the trustee.

Q Do you know when and where the Robert A. Martin Associates records were turned over to the trustee or his representative?

A I believe they were turned over in two ways: (1) a substantial amount of the books were delivered directly from the Hahn Warehouse and I believe there is a receipt in the receipts that were referred to that are in evidence, signed by Andrew Kuchinsky in which he delivered three ledger books, general ledger books, to the trustee.

MR. GARTLIR: May the record indicate that the witness is referring to a hand-written receipt which is attached to and is part of Exhibit D, which was just referred to as being in evidence.

A (continuing) -- Excuse me, with reference to the

last question, in addition other books and records of Robert A. Martin Associates, Inc. were delivered, I think, from the Attorney General's Office,and I believe there is a receipt for those in the record.

Q Now, Mr. Martin, you have referred to two other records in your testimony relating to a company called Tracon and relating to a company called Century. Were these companies with whom you did business?

A Yes.

Q And before you answer the rest of my questions, how substantial was the business which you engaged in with Tracon and Century during these years having in mind the total nature and extent of your business activities on behalf of your company?

MR. RUBACK: Object. That calls for a conclusion.

THE REFEREE: Yes.

MR. GARTLIR: I will rephrase it.

THE REFEREE: I would like you to rephrase it. How substantial -- what is substantial to one man may be insubstantial to another.

MR. GARTLIR: I said, having in mind the total sum of the business.

Q What percentage would you say of your business

activities during those years was conducted with these two companies?

THE REFEREE: That's a fair question.

A To the best of my knowledge, with reference to my trading activities, almost all of these trading activities were cleared through either Century Industries, Inc. or Tracon Corp. Inc., and in addition a portion, a smaller portion of the interim finance loan business conducted on behalf of Robert A. Martin Associates, Inc. the underwriting department, was conducted also through these two corporations.

Q In effect they were the principal companies with which you did business?

A Yes. There were none larger in the aggregate and represented almost all of my transactions.

Q In fact they were the largest creditors who filed claims in this bankruptcy?

A I think their claims equal almost 70% of all the claims to date.

Q Now, I would like you to tell the Court -- I don't think we have gone into it -- exactly what your transactions were with these companies, you personally, during this period.

What was the nature of your business activities

with them?

A Both of these corporations advanced moneys for the purchase of securities carried for the account of Robert A. Martin, and from time to time advanced moneys to me to loan to other corporations that might go public in the future through Robert A. Martin Associates, Inc.

There were interest charges for these advances of money, and all the security transactions were cleared through the banks that represented these two corporations.

Q What records of the transactions with Tracon and Century were maintained during that period? What financial records, what documents?

A By them or by myself?

Q I will ask you first by you and then by them?

A I kept a bound folder with reference to the Tracon Corp. which was a recapitulation with an explanation on numbered in order of times sequence, showing debits and credits to the account of Robert A.Martin for moneys advanced or received on his behalf,and for what reason these moneys were advanced or received.

Q And what records did Tracon Corp. keep, to your knowledge?

A To my knowledge certainly Catury and most positively also, Tracon Corp. -- Century was a public company listed

on the New York Stock Exchange, kept full sets of ledger books, general ledgers, disbursement books.

THE REFEREE: What was his interest in those two corporations?

Q What was your interest in those two corporations, if any?

A I had no financial interest in them. They merely were in effect banking all of my transactions and, therefore, the activities of those corporations as pertained to me reflected my entire economic life during that period.

THE REFEREE: How does he know what books and records they kept?

Q How do you know what books and records they kept?

THE REFEREE: Besides that, I don't think it is important as to what books a creditor keeps. That doesn't help you at all. You have got to keep books and records.

The cases clearly hold that you can't establish that you kept the books and records by showing that you can prove your transactions through the books of your creditors. So I dont think it is important.

MR. GARTLIR: May I address myself to that?

THE REFEREE: You go ahead. I just want you to know how I feel about it.

MR. GARTLIR: I know how you feel. I thought I could be heard because you made the comment. If you want me to proceed I will. Which will it be?

THE REFEREE: You proceed.

Off the record.

(Discussion off the record).

(Recess taken at 11:40 A.M., and hearing resumed at 11:45 A.M.).

DIRECT EXAMINATION BY MR. GARTLIR (Continued):

THE REFEREE: Mr. Martin, will you explain to me again in simple terms because I have never been in the brokerage field, your relationship to the Martin Company which I understand was a broker sort of, and your relationship to the two other corporations who I gather were your bankers, who did your financing. Suppose you clarify that for me.

THE WITNESS: In this instance Robert A. Martin Associates, Inc. might be thought of as any other brokerage firm, not comparable in size to a Bache or Merrill, Lynch, as a broker-dealer,

and while being a principal stockholder and an officer of that corporation, while transacting securities trades for my own personal account, Robert A. Martin, I often used Robert A. Martin Associates, Inc. as my broker, the same as the president of Merrill, Lynch might conduct trades for his personal account through Merrill, Lynch.

In addition, the other two corporations referred to were advancing moneys to me to carry securities very much the way brokers advance money on margin to carry securities.

These brokers at that time were exempt from regulation T and could make larger advances of money than brokers.

BY MR. GARTLIR:

Q Is it fair to say that Tracon and Century were your bankers?

A In effect, yes.

THE REFEREE: That's what I called them.

Q Now, coming back to the records which is really the purpose of this inquiry, the background, I refer to specifically now to what you have referred to as debit and credit memos, Mr.Martin, which you kept -- never mind what Tracon kept on its books. Was there a

debit and credit memo for each transaction with Tracon?

A Yes, there was.

Q And Century?

A With Century there was. The difficult was that with Century, as happens with creditors who wind up being creditors in which their loans are in default, I had difficulty in getting them to deliver to me the debit and credit memos that were prepared on my behalf.

Q Now, Century, do you have all the debit and credit memos in your possession?

A Tracon.

Q Yes, Tracon; I am sorry.

A Yes; they were all delivered to the trustee.

Q And what form did they take?

A They were in a kind of bound together -- in numerical order, each ticket was numbered and clearly typed, and reflected every transaction between myself and Tracon Corp. from the very first day of business to the last.

Q Did that present a complete record?

A That presented a complete record, and I would go so far as to say from those debit and credit memos a complete -- a ledger book could be compiled, or it could even be the basis of their ledger book. It was quite

detailed.

Q But you didn't maintain a ledger book on that, did you?

A No, I did not.

MR. RUBACK: What was the question? You did not maintain --

MR. GARTLIR: He didn't maintain a ledger book.

THE REFEREE: Actually he doesn't have to.

MR. GARTLIR: Exactly.

Q Did you hear Mr. Lautt testify on this particular subject about his analysis?

A Yes, I did.

Q And correct me if I am wrong, did you hear him say that he glanced at the credit and debit memos but he didn't examine them thoroughly?

A He said, "from time to time I glanced through them. I wasn't too interested in them."

THE REFEREE: That is what he said.

THE WITNESS: Isn't that right?

THE REFEREE: That is what it is.

Q You testified that you turned over all the records of Robert A. Martin Associates, Inc. to the trustee and his representative. How did that come about?

Did he ask for them? Did you volunteer them? Why did you do that?

A I turned over those records for two reasons: first, since I had conducted a substantial amount of business personally, Robert A. Martin through Robert A. Martin Associates, Inc., first in their capacity as acting as a broker for me, in which the general ledger would show all the purchases and sales that I made, and (2), inasmuch as I lent money on a subordinated basis to the corporation over a period of time the general ledgers reflected moneys and interest payments both from me and to me to the corporation during the years that they were active.

Second, it was my belief that since Robert A. Martin Associates, Inc. represented the largest single asset that I had, that the trustee would be interested to know how it was that this asset became worthless.

Q Did it become worthless?

A Yes, it did, and in delivering those books and records they would have been able to see the whole financial history of the demise of my one single largest asset.

Q Did you ever have a conversation with the trustee or his representative in which you volunteered to go over the Robert A.Martin Associates books with them?

A I did on several occasions, and in addition, in the receipts that are offered in evidence here, is a letter addressed by me to the trustee reiterating a telephone offer I had made to him to be available at any time to explain any item of any kind, including the books of Robert A. Martin Associates, Inc. and of my own.

Q Was such a conference ever held?

A There never was a single conference between myself, the trustee, or the trustee's accountant or counsel concerning my books and records or financial activity.

Q Are you saying that nobody ever asked you a question about your personal records or the records of the corporation?

A Never once in the entire time since I filed my petition, on no occasion, either by telephone or in person.

Q Mr. Martin, there has been put in evidence here a whole series of work sheets which is really the sum and substance, as I understand it, and I have colored the question a little bit to make you understand it, of the accountant's work in this case, Mr. Lautt; you recall that, don't you?

A Yes, I do.

Q These sheets are marked in evidence?

A Yes, they are.

Q And just again by way of expediting your testimony, I think it is fair to say the sum and substance of what has been said by Mr. Lautt in his testimony based on these work sheets, is that he made a tabulation of checks, a series of checks running through a whole period of years, for which he is unable to determine or was unable to determine the nature and purpose -- I think those were the words that were used, the nature and purpose of these checks -- you heard that evidence, didn't you?

A That is correct.

Q Now, these exhibits are here in Court, and you have just testified, a moment ago, that you were never asked to, or inquired about any of these transactions represented by these checks.

I am going to show you this list which is Exhibit -- for the record it is marked Exhibit A in evidence, and this first sheet purports to be a recapitulation of checks drawn on Kings County Trust Company and the Hanover Bank, and I want you to look at that exhibit --

THE REFEREE: There are three exhibits, A, B, and C.

MR. GARELIR: I am referring now to A, and I am referring to the top sheet and the list of

checks shown with the amounts,and so on.

Q I am now asking you,Mr.Martin, whether you can tell this Court the purpose and nature of those checks.

First answer the question before you do, can you?

A On almost all of these checks I can identify the purpose and nature, and on the few that I can't I can at least make reference to where in my personal records or the records of Robert A. Martin Associates, Inc. you can find the purpose and nature of these checks.

Q Now, these are all personal checks, aren't they?

A Yes, that is correct.

Q Drawn on your personal account?

A Correct.

Q And your personal check book?

A Correct.

Q And there were vouchers and checks for each one of them?

A Correct.

Q Before you do so I am going to ask you another question: You heard Mr. Lautt testify that for many of the checks there was an inscription on the check itself. Did you hear that testimony?

A Yes, I did.

Q Indicating the purpose?

A Yes, I did.

Q How did that get on there, by the way?

A Those were marked by me at the request of my accountant who was preparing my income tax returns to try to make some notation for his benefit on the check why the check was made out and for what nature and purpose.

Q I would like you now to take a look at that list, and I would like you to tell the Referee the nature and purpose of the checks drawn on the list at this point.

A The first name that is here is Oppenheimer & Co. Oppenheimer & Co. are members of the New York Stock Exchange, and this check was written for the purchase of securities, and can be identified by taking the month end statement of that check date and/or the purchase slip from the records turned over to the trustee.

Q Just a moment, Mr. Martin. You don't keep a personal ledger of the purchase of securities, do you?

A No.

Q You don't keep a ledger?

A No.

Q You don't keep a book?

A No.

Q You don't keep a bound record of your purchase of securities?

A No.

Q And you say this check represents a purchase of securities?

A Correct.

Q What was the other document to which you referred from which the purpose and nature could be determined in terms of the exact transaction?

A The purchase slip.

Q Where is that purchase slip?

A In the trustee's possession.

Q Is it part of the records that were turned over?

A It is part of the records turned over.

Q Would it also be in a brokerage statement, month end, so to speak?

A Yes.

Q Go ahead.

A Ted Baron was a public relations man for Robert A. Martin Associates, Inc. and for myself. He was under retainer agreement. The letter agreement with Ted Baron would be in the correspondence file of Robert A. Martin Associates, Inc.

Philip Sherman is a --

Q Might there also be a bill?

A I don't think so. I think he was on a monthly basis of $700 a month.

Q This check --

A This check and there should be other checks as we go through the list, to him.

Philip Sherman $800. was a personal loan. He was an employee of Robert A. Martin Associates, Inc.

Q Any other record of that?

A I don't think so.

Joseph Tillinger is a shirt maker who made shirts. He is located on West 72nd Street in New York.

Q Shirts for whom?

A For me personally.

Q Where are the stubs for these checks? Where is the book that these checks came out of, if there was a book?

A The --

Q Incidentally, was there a book?

A Yes.

Q A check book?

A A check book.

Q A bound check book?

A A bound check book.

Q Your personal check book?

A Right.

Q Where are the stubs?

A During 1960/ '61 '62 and maybe part of '63, a few months, the check book was kept for me by an employee of Robert A. Martin Associates, Inc., and to the best of my knowledge the stub books were shipped with the books of Robert A. Martin Associates,Inc. to the Hahn Warehouse, and apparently according to the trustee, what he received from the Hahn Warehouse -- he did not find the stub books. They were either lost or sent astray in some way.

Q So that the record is clear, so far as you know you don't know the disposition of the stubs or the check books themselves as to which some testimony has been given, is that right?

A That is correct.

Q That is a fair statement?

A Yes.

Fred Senk was a margin clerk for Robert A.Martin Associates, Inc. and a check here for $689. and another check for $495.40 represented work that Mr. Senk did for me personally, overtime work in compiling the records of Tracon Corp. and in handling deliveries of securities

for me, and letters of instruction.

Q So there is no understanding as I interrupt you, you are not testifying solely on the basis of memory, Mr. Martin, and by that I mean there are other papers you say that support these checks, whether it is an agreement or a contract or a bill from a shirtmaker and the like, is that correct?

A A good deal of them. Of course, not on every single check. Some are from memory and I am sure as I go down here there will be one or two items of great significance that I will simply not remember, but I think on the greater portion of these checks they are identifiable first,directly by me from memory, and second, with some other secondary source of identification.

Q And with respect, for example, to the checks which are in large substantial amounts, and I am not referring now to a shirtmaker of $50; for example, Abraham Bros., what is the amount of the check?

A $37,526.30.

Q Who is Abraham Bros.?

A It should be Abraham & Co. actually. They are members of the New York Stock Exchange and brokers whom I dealt through.

Q And would there be an auxiliary record?

A Purchase and sale confirmations and monthly statement.

Q And let us take another substantial payment, just by way of example, if I may. Here, for example, refer to this check if you will.

A (Witness examines same). Check to Robert A.Martin Associates, Inc. for $23,399.59, and another check for $75,598.40.

Q On two different banks?

A On two different banks. These checks would be reflected either as a purchase of securities in the customers' ledger of Robert A.Martin Associates, Inc., or could possibly be advances of money which would be reflected in the subordinated loan account of Robert A. Martin with Robert A. Martin Associates, Inc.

Q You don't have any other record of that?

A No, but I relied on the general ledger of Robert A. Martin Associates, Inc. and my own record if there was a stock purchase of the purchase confirmation.

Q Would the general ledger of Robert A.Martin Associates, Inc. reflect all of these checks and these transactions between you and Robert A. Martin Associates, Inc.?

A Every single one.

Q Did you ever have occasion to have a conversation with the trustee or any of his representatives regarding that particular subject, namely, your transactions between Robert A. Martin and Robert A. Martin Associates, Inc.?

A None whatsoever.

Q At the time when your income tax returns were prepared for each of the years in question, 1960 and succeeding years as incorporated in this exhibit, what records did you have or make available to your accountant for the purpose of preparing your income tax returns for those years?

A The records that were made available to my accountant were simply the same records that were given to the trustee, namely, cancelled checks, purchase and sale confirmations from brokerage firms, photostats of the ledger sheets of Robert A.Martin Associates, Inc. representing my purchases and sales with the corporation, and such ledger sheets also, a photostat, was delivered to the trustee, and in addition my accountants wrote to Century and Tracon Corp. at the end of each year, or near the end of each year, requesting certain information regarding interest charges, service charges, and other factors which were required and were used to compile the

returns.

Q Did you have occasion during those years to make a statement, financial statement, for any financial institution or any other company?

A I never had a financial statement prepared as such, a balance sheet of any kind. I did answer financial questionnaires and applications for loans during 1964 or '5, or perhaps later.

Q And were you ever asked by the trustee or any one of his representatives to identify any of these checks to which you just referred?

A Never.

Q Now, in your petition and other documents which you put on file in this Court there is a reference to assets, is there not?

A Yes, I had substantial assets.

Q Well, what assets, Mr. Martin, are you referring to?

A Securities, notes receivable that were pledged with creditors.

Q And there is reference made in these papers to those, is that what you are saying?

A I believe there is a schedule in the original filing, the petition.

Q Was an inquiry ever made of you or your records concerning the existence of these assets, or their whereabouts, their collectibility and the possibility of reducing them to an estate?

A No inquiry was ever made to me concerning my assets.

Q You were examined here, were you not, extensively in 21a proceedings in this Court?

A That is correct.

Q And during all of these proceedings were any questions or any inquiries ever made of you regarding the whereabouts, the existence of these assets?

A The only indirect inquiry during the examinations was made by Mr. Ruback when he made inquiry about moneys advanced to Artia-Parliament Industries, Inc. and Ameril Drug Co., the nature and purpose of Mr. Ruback's inquiry, however, to the best of my recollection,were not related to the realization of those assets but pertained more to my activities in relation to the transactions involved at that time.

Q Well, you testified a few minutes ago that the substantial asset which you owned was Robert A. Martin Associates, Inc., the corporation; isn't that true?

A That is correct.

Q You owned what, 80% of it?

A 80% of the stock of the company.

Q How did the loss occur in Robert A. Martin Associates, Inc.?

A Robert A. Martin Associates, Inc. lost approximately between 750 thousand and 900 thousand during late 1961 and early 1962 in three specific areas.

The first was the market break of May, 1961 which greatly reduced the value of securities carried by the corporation.

The second, the loss through expense in preparation of several million dollars of underwriting which could not be sold; and

Third, when income finance advances made mostly by myself and the corporation became relatively worthless, it was necessary for me to take whatever subordinated moneys I had in the corporation and repay as many of those loans as possible, until the corporation didn't have adequate capital to continue, and I did not have adequate capital to furnish for the corporation to continue.

Q Are you saying then that Robert A. Martin Associates, Inc. liquidated its debts?

A Robert A. Martin Associates, Inc. liquidated all debts to customers and brokers, and the only debts that Robert A. Martin Associates had which remained unpaid

were some very small debts to trade creditors.

Q And then the net effect, if I am giving you the history of that series of events, produced your own personal bankruptcy?

A That is correct.

May I add one thing that I had forgotten -- during this period, of course, with the diminishing income available to the corporation from underwriting activities and from commissions income, the corporation, of course, for a period of time, wisely or unwisely, continued to maintain a fairly high overhead in relation to employees that could not be let go that easily, and fixed overhead such as rent.

MR. GARTLIR: I would like to stop at this time for a moment.

THE REFEREE: I think we will suspend until 2 o'clock.

(Witness temporarily excused).

(Recess taken at 12:15 P.M., and hearing resumed at 2:00 P.M.).

THE REFEREE: Off the record.

(Discussion off the record).

THE REFEREE: Are you completed with your examination?

MR. GARTLIR: For the moment.

THE REFEREE: Have you completed?

MR. GARTLIR: Yes, I may have redirect.

THE REFEREE: All right.

R O B E R T A. M A R T I N, recalled as a witness, having been previously duly sworn by the Referee, resumed the stand and testified further as follows:

CROSS EXAMINATION BY MR. RUBACK:

Q Mr. Martin, you stated that you were the chief stockholder of Robert A. Martin Associates, Inc.; is that correct?

A I owned 80% of the stock, that is correct.

Q I would like to have clarified, during what period of time were you associated with Robert A. Martin Associates, Inc.?

A Approximately from 1960 to the conclusion of business which is a hard date, but I would say some time in late or early '63.

Q 1963?

A Given degrees, you know, the amount of activity as a thriving corporation only until about '62.

Q So in 1962 Robert A. Martin Associates, Inc. went out of business?

A Ceased to do business with the public.

Q Did it do business with anyone?

A Just basically in liquidating its affairs and perhaps concluding some business transactions. I couldn't recall.

Q Did it buy securities?

A I don't believe so.

Q Did it borrow moneys?

A It may have made some small loans; I don't know.

Q Well, you were the principal stockholder and chief executive officer, and would you not know whether they borrowed moneys?

A As I said, I would state, number 1, probably not, and if they did it was some very insigificant amount during the liquidation, but I don't know.

Q And that liquidation started when?

A Late 1962 or early '63.

Q So that in 1963 certainly they didn't borrow any considerable amounts of money, is that a fact?

A That is a fact.

Q Please, I did not hear you.

A That is a fact.

Q And therefore no entries were made in the books and records of Robert A. Martin Associates, Inc. concerning any loans; is that a fact?

A That may not be a fact.

Q Did it make any entries concerning loans?

A It very possibly may have made entries concerning a repayment of subordinated loans --

Q Your memory was rather excellent this morning --

THE REFEREE: Don't scold him. Just ask questions.

MR. GARTLIR: And let him finish his answer.

MR. RUBACK: I withdraw, your Honor. I apologize.

A Would you like to read the question back?

THE REFEREE: Go ahead.

Q I will repeat it.

A Thank you.

Q Do you recall at this time whether any loans were reflected in the books and records of Robert A. Martin Associates, Inc. during the year 1963?

A Do you mean whether there were loan entries made during that year?

Q Yes.

A To the ledger books or were there loans outstanding in previous ledger sections?

Q I mean, do the books reflect any loans being

made to Robert A. Martin Associates, Inc.?

A I don't believe so.

Q Is it a fact, therefore, that Robert A.Martin Associates, Inc. did not borrow any moneys during the year 1963?

A Probably not.

Q And did they borrow any moneys in 1964?

A No, not that I recall.

Q Did you borrow any moneys on behalf of that corporation?

MR. GARTLIR: Fix the time, please.

Q During 1963.

A Yes, some of the loans that I made personally during 1963, and even late 1962, were used to help pay employees of the corporation, and to meet some of the corporation's expenses personally.

Q You borrowed moneys for the purpose of helping the corporation, is that a fact?

Was it for the corporation?

A Some of the loans may have been for the corporation.

Q How many loans were for the corporation?

A I would not be able to say that.

Q Do you know from whom you borrowed moneys for the corporation?

A I will repeat again, and maybe this will clarify it for you. Some of the loans that I made during 1963, proceeds of those loans were used partly to defer my own personal living expenses, and some of them may have gone to pay for personnel, employees, perhaps some past due bills, for the corporation.

Q So they were for the corporation, correct?

A Yes.

Q And you were lending the money to the corporation, is that right?

A That is correct.

Q In other words, you borrowed money from Mr.X, for example, and in turn loaned it to the corporation?

A I don't even want to necessarily say loaned. I advanced the money. It was not a formal thing.

Q As an investment?

A Mr. Ruback, I had had a lot of people that worked with me four or five years that were in a similar condition that I was; they were bookkeepers and they were poor people, and they were trying to wind up the affairs of the corporation, and they had to get paid. From time to time some of the loans I made were used to help pay these people.

Q Now, Mr. Martin, some months ago you testified

that you had a degree in the field of business?

A A degree?

Q From a college.

A I have no degrees.

Q No degrees?

A No.

Q Did you take business courses?

A No, I never took business courses.

Q How long have you been a business man?

A By my definition?

Q By your definition.

A I guess I transacted business since 1960.

Q Do you know the difference between a loan and an investment?

A I think at times they can be the same thing.

Q Be the same?

A Yes.

Q When you advanced moneys during 1963 to Robert A. Martin Associates, Inc. did you advance it as a loan or as an investment?

A I don't think I stopped to make that judgment as a business man. I simply was trying to pay some employees who needed money for their families, who helped us wind up the corporation. I don't think I had an expectation

of either where I would recover the money from, whether I would charge these people interest, or get notes from them. I was just doing something that I felt morally obligated to do.

Q Incidentally, did you reflect that in the books of Robert A. Martin Associates, Inc.?

A As moneys advanced?

Q As moneys advanced.

A I would have to look at the books to check whether that was entered that way.

Q What does your memory tell you at this time?

A I want you to be aware that I did not post in the accounting sense to those ledgers. The bookkeepers were doing that. If I looked at the ledgers I could determine if they credited me with those advances.

Q I see. Well, prior to your filing your petition in bankruptcy did you try to ascertain whether or not Robert A. Martin Associates, Inc. owed you any money?

A Yes.

Q Did you?

A That matter was discussed extensively with my first attorney, and the amounts of money due back and forth between the subordinated loans, moneys I advanced, moneys which I had borrowed from the corporation, were offset

within an infinitesimal amount of money.

Q They were offset?

A They were offset.

Q And were there records which Mr. Kuchinsky -- he was your former attorney, was he not?

A That is correct.

Q Were there records which Mr. Kuchinsky examined to determine the nature of the offset?

A This information was supplied to us by Biller & Snyder, the auditors.

Q Biller & Snyder the auditors?

A Correct.

Q Your auditors?

A Auditors for Robert A. Martin Associates.

Q And did they examine any records, to your knowledge, to determine whether or not they were offset?

A They had full possession and had audited the books and the ledgers of Robert A. Martin Associates, Inc., filed the final return, and the question arose as between the advances made by Robert A. Martin and the moneys he had borrowed from the corporation, and moneys that had been paid either on his behalf and vice versa, that the balance was in balance.

Q Who in the Biller firm were you dealing with?

A Mr. Lampal.

Q And was he the gentleman who filed the final returns?

A The firm did. I don't know if he did.

Q When were those final returns filed?

A 1963.

Q 1963 the final returns were filed?

A Correct.

Q When in 1963?

A I don't know the exact month.

Q During the first half or the second half of the year?

A I would be guessing but I would say the first half.

Q The first half?

A Yes.

Q Incidentally, was Robert A. Martin Associates on a calendar or fiscal year basis?

A They were on a calendar year basis.

Q Therefore, was this return being filed for the calendar year 1962?

A That's correct.

Q Do I therefore understand from that answer that they did no business in 1963?

MR. GARTLIR:Well, I don't think that's the

purpose --

MR. RUBACK: This is cross-examination. I want to know what his knowledge shows.

A I would say that Robert A.Martin Associates had no net income during the year 1963 and therefore were not required to file a return.

Q When you say a final return does that indicate they were out of business or were no longer doing business?

A Out of business.

Q Out of business?

A Yes.

Q So they would have no necessity to borrow any money, is that not correct?

A Except for advances to help the people complete the liquidation of a stock brokerage firm that had over 5 thousand accounts, and as you know from other firms that have encountered difficulties in recent years, these liquidations don't wind up on the dot.

Q Can you recall the date or amount of any one advance during the year 1963?

A By the corporation?

Q By the corporation, and from whom.

A The corporation was advanced moneys in effect as

I previously testified, by myself.

Q As a loan?

A I think I testified to that, over and over again.

Q Were you a creditor of Robert A.Martin Associates, Inc.?

A During what period?

Q In the year 1963.

A During 1963?

Q Yes.

A A net creditor or a creditor?

Q A creditor.

A During 1963 I advanced moneys on behalf of the corporation, as I previously testified. During prior years the corporation may have advanced moneys to me.

Q How much did you advance to the corporation either by way of loans or by way of investments during 1963?

MR. GARTLIR: Just a moment. I think the witness was in the middle of completing the answer when counsel puts the next question.

THE REFEREE: Please let him finish the answers.

MR. RUBACK: I am sorry. I will repeat the question.

MR. GARTLIR: I think he should be given the opportunity to give a full answer. If it is not full you can explore it further.

MR. RUBACK: I am sorry.

Q How much --

A Can I complete the answer? I didn't finish the other question.

Q All right.

A In respect of the moneys I advanced if taken in as of themselves, I was a creditor of Robert A.Martin Associates, Inc.

If one took the view and said, yes, he advanced moneys but he owes at least that much money to the corporation, then you might not say he is a net creditor, and it is just by way of definition.

There were transactions back and forth that during the corporation's lifetime are reflected under the subordinated loan account, ledger sheet of the general ledger, and the personal account of Robert A. Martin Associates, Inc. showing debits and credits and exchanges and advances back and forth between myself and the corporation.

Q Are you finished now with that answer?

A Yes.

Q How much, sir, did you give to the corporation either by way of loan or investment during the year 1963?

A I could not say without checking the books of Robert A. Martin Associates, Inc., not accurately.

Q Were these loans or investments during the year 1963 made by check or by cash?

A I would say almost all of them were made by check.

Q By check to Robert A. Martin Associates, Inc.?

A Some of the checks were made to Robert A. Martin Associates, Inc. but the corporation had difficulty in being able to maintain checking accounts, and in that respect I paid many of their obligations directly from my own checking account, and they are reflected by the checks delivered to the trustee.

Q And to that extent you became either a loan creditor of Robert A. Martin Associates, Inc. or would reflect further investment in that concern; is that a fact?

A Or a third possibility, these advances helped to reduce the indebtedness that I already had to the corporation.

Q Now, let's take the first possibility. You said that Mr. Biller's firm made an analysis; is that correct?

A The firm is Biller & Snyder.

Q Did they make an analysis of your debits or credits with Robert A. Martin Associates, Inc.?

A They referred to the general ledgers and just looked at them.

Q Did they make a written analysis?

A I don't know.

Q Did they give you any written analysis?

A I believe they gave a letter to my attorney. I can't even say that for sure. It may have been a phone call, I don't know.

Q How much did they tell you was due from either you to Robert A. Martin Associates, Inc. or from Robert A. Martin Associates, Inc. to you, as of the date you filed the petition in bankruptcy?

A My recollection was that the difference between the advances made to me and by me generally offset each other.

Q By generally you mean what, within $5, $100 or $1,000?

A An insubstantial amount.

Q In what?

A Insubstantial.

Q What do you consider to be insubstantial?

A Possibly a few hundred dollars or less.

Q A few hundred?

A (No response).

Q Within what minimum or maximum range?

A I don't know, Mr. Ruback. I would have to look at the general ledger. I really would.

Q And if you looked at the general ledger of Robert A. Martin Associates, Inc. are you stating that you will be able to tell exactly how much is due either to you from the corporation, or from you to that corporation?

A It is my belief that if we did that we would find in the corporation's books amounts due and owing from Robert A. Martin to the corporation, and in order to complete our analysis we would have to compile checks advanced by me on behalf of the corporation from the period of 1963, possibly late 1962 on, and reconcile the balance between those advances and the moneys owed by me to the corporation.

Q Is that a belief or a certainty?

A That is just my opinion in answering your question.

Q Now, was Robert A. Martin Associates, Inc. an investment of yours as an 80% stockholder?

A Yes.

Q Incidentally, on direct examination this

morning you testified that you had substantial assets which were reflected in the schedules, and which neither the trustee nor the attorney for the trustee attempted to collect; is that a fact?

A Generally, yes.

Q Generally, yes.

What were your assets at the time of the filing of the petition in bankruptcy?

A If you will give me a copy of the petition I will read that to you.

MR. RUBACK: I will be glad to.

MR. GARTLIR: I have it.

THE REFEREE: What is that?

MR. GARTLIR: I asked for the original file.

THE REFEREE: What are you looking for?

MR. RUBACK: The schedules in bankruptcy, your Honor.

MR. GARTLIR: I asked the clerk's office to have the file here.

MR. RUBACK: I have a copy and you can use it for the moment.

MR. GARTLIR: I remember there was an amendment.

MR. RUBACK: You mean, the Statement of

Affairs.

MR. GARTLIR: The petition was not amended, was it?

MR. RUBACK: No.

BY MR. RUBACK:

Q Sir, what were your assets as of the date of the filing of the petition in bankruptcy?

A Do you want me to read them all? It is quite a long list.

Q Is it?

A It is quite long. It covers several pages.

Q Your assets?

A My assets. There is one page here --

Q Sir, I am not referring to debts. I am referring to assets.

A With deference to you, Mr. Ruback, this is a schedule called Schedule A-2 which lists creditors and assets held by those creditors. These are my assets against these debts -- creditors holding security, Schedule A-2.

THE REFEREE: Let me see it.

(Schedules handed to the Referee).

THE REFEREE: Do you see what he means?

MR. RUBACK: Yes.

THE REFEREE: He is talking about creditors holding security and those securities he says are his assets.

Did he list them separately?

MR. RUBACK: No, sir.

THE WITNESS: There is another schedule of assets not held by creditors.

MR. GARTLIR: I would like the answer to the question in the record.

THE WITNESS: Do you want me to give a brief description of these schedules?

MR. GARTLIR: There is a pending question which I would like the answer to.

MR. RUBACK: He can answer.

THE WITNESS: Schedule A-2 from the petition lists 37,000 shares of various stock issues valued at $58,000.

In addition, it lists two corporate promissory notes in the aggregate amount of $75,000.

In part 2 of Schedule A-2 there is listed 20,500 shares of various securities having a value of approximately $300,000; corporate promissory note in the amount of $45,000; art work valued at $85,000; and a membership bond for $1,000.

Then on Schedule B-2 under "Personal Property" there is listed various notes receivable and personal debts in the aggregate amount of approximately $33,000., and the work of art with a net value after pledge against it of $125.

CROSS EXAMINATION BY MR. RUBACK (Continued);

Q Mr. Martin, did you anywhere on this schedule list, in any of these schedules, list Robert A. Martin Associates, Inc. as indebted to you for any sum of money?

A I don't believe so.

Q Now, sir, you testified this morning that you were receiving salary from Robert A. Martin Associates, Inc.; is that a fact?

A That is correct.

Q During what years?

A To the best of my recollection 1960, 1961 and part of 1962.

Q How much did you receive in 1962?

A I don't recall but my best recollection is it would be a few thousand dollars.

Q By a few you mean how much?

A Five or less.

Q In 1962?

A Yes.

Q Did you receive any salary from Robert A. Martin Associates, Inc. during the year 1963?

A I don't believe so but I am not positive. I would say no, to the best of my recollection.

Q What salaries did you receive during the year 1964?

A From Robert A. Martin Associates, Inc.?

Q Yes.

A None.

THE REFEREE: Weren't they wound up by 1964?

THE WITNESS: Yes.

THE REFEREE: Was the corporation dissolved or is it just non-operative?

THE WITNESS: Non-operative.

THE REFEREE: Never went into bankruptcy or anything like that?

THE WITNESS: No.

BY MR. RUBACK:

Q Did you not testify this morning that you were employed by Robert A. Martin Associates, Inc. during the years 1961 through 1965?

A I don't recall testifying in that manner. I believe the testimony was that I was employed by the corporation during its operative years, from 1960 until they wound

up their affairs in approximately 1962 to early 1963; that there was a period when I continued to assist the finalization of the corporation, and that some time during part of 1965 I attempted to engage in merger and acquisition business as a business broker.

Q Was that the first time you attempted to engage as a business broker in 1965?

A Other than in my activitie for --

Q Robert A. Martin Associates?

A Possibly; I may have attempted to in '64. It is something I just can't pinpoint. I was struggling to make a living.

Q Were you engaged as a business broker in 1964?

A Depending on the definition of "business broker", of course it is possible. I was trying to make a living. I was trying to "introduce" people to other people, get finder's fees, rendering any services I could to make a living.

Q As a matter of fact, you were engaged as a business broker from the year 1962, were you not?

A I couldn't make a definition of that.

Q Sir, do you recall testifying on February 1, 1966?

A No, I do not.

Mr. Ruback, I just want to say this if it will clarify it for you: I testified very clearly as to what I was doing to the best of my recollection here, over and over again. I have outlined my general activities. I can't remember what I testified to in 1966. If you read it back to me I will try to refresh my recollection, and I will be glad to listen to it.

Q Sir, do you recall being asked the following questions and then giving the following answers:

"Q Now, in your Statement of Affairs you state that you have been a business broker, is that correct?

"A That is correct.

"Q And you also state that you have been self employed as a business broker, is that correct?

"A That is correct.

"Q How long have you been employed as a business broker?

"A I would say approximately the end of 1962, early 1963, and let's call it to 1964.

"Q The end of '62 to early '64?

"A To the middle, toward the end of 1964, a little over a year."

Do you recall being asked those questions and

giving those answers?

A I assume the transcript is correct.

Q Were the answers which you gave at that time correct?

A Those answers sound very consistent with what I just testified to today, give or take a time span. It seems to be a very candid disclosure to you of what I was doing at that time.

Q So that if those answers were correct you were engaged as a broker in 1962?

A In 1962 I was employed --

MR. GARTLIR: That is not his testimony.

THE REFEREE: I don't think so either.

MR. RUBACK: He was self employed.

MR. GARTLIR: I am going to object. We had this read into the record once before on the prior transcript.

THE REFEREE: He is cross-examining and I will allow him to cross-examine. I don't want him to misquote.

MR, GARTLIR: It says in this transcript "How long have you been employed as a business broker"? "A I would say approximately the end of 1962, early '63, let's call it, to '64" --

referring now to his '66 testimony.

MR. RUBACK: That's right.

THE REFEREE: So his recollection then was, when he testified, it was early '63, and that is quite consistent with what he put in his Statement of Affairs.

MR. RUBACK: I am not denying that, your Honor.

THE REFEREE: Go ahead.

BY MR. RUBACK:

Q At any rate you were a business broker during the year 1963?

A I want to cut off at one point before I would be able to answer that. This term "business broker" we are using is a term that I adopted as a layman and not as a professional adapter of names.

THE REFEREE: Just tell us what you meant and what you mean by "business broker".

THE WITNESS: I was out trying to do business, trying to earn fees.

THE REFEREE: Doing what?

THE WITNESS: Introducing people to possible mergers and acquisitions; introducing people for loan transactions; maybe evaluating a company for

some one. This kind of thing. Just trying to earn any kind of a fee I could for doing any kind of work. I was out in the world struggling. I had three children --

THE REFEREE: And pick up a finder's fee.

THE WITNESS: And pick up a finder's fee where I could, from a position of --

THE REFEREE: All right, as a business broker.

THE WITNESS: I just want to make it clear. I had to pick a title for it. I was out trying to earn a fee wherever I could.

BY MR. RUBACK:

Q Mr. Martin, I show you Exhibit A from which you testified this morning. Do you recall the same?

A (Witness examines same). Yes.

THE REFEREE: What was Exhibit A?

MR. GARTLIR: Recapitulation of checks.

THE WITNESS: Not identified as to nature and purpose.

Q Sir, you started your explanation with the third item, Oppenheimer & Co., is that correct?

A Yes, that was the first item with a name on it.

Q Now, sir, with respect to the very first item on that sheet, it speaks of $14,670. of cash checks

drawn on the Kings County Trust Company.

Was any record made of those checks as to either nature or purpose?

A There was no record of that insofar as the stub books are not available. Mr. Lautt, however, in his computations arrived at figures where these checks had been deposited as exchanges or transfers to others, other accounts, where he had eliminated many of them. I don't know to what extent.

Q Sir, never mind what Mr. Lautt found. Can you tell me the nature or purpose of $14,670.60 of cash checks drawn on the Kings County Trust Company during the year 1960?

A Not definitely without seeing the check. Could you show me the check? If I could examine it I am sure that I can identify it.

THE REFEREE: What was the question, please?

MR. RUBACK: I asked him could he explain the nature or purpose of $14,670.60 of cash checks drawn on the Kings County Trust Company during the year 1960.

THE REFEREE: And he told you if he looks at the checks he could probably tell you.

Q So that we bring them all together, would

your answer be the same with respect to $32,142.55 representing cash checks drawn on the Hanover Bank?

A That is correct.

Q And would --

A Let me say this -- by the way, based on the odd amount of money involved, even before seeing the check I would be pretty certain that these are funds that were transferred from one bank in the exact amount to another to be used to pay for a security purchase, and not only will we probably find identification on the check but we should find the corresponding check on the same or nearest date drawn to a brokerage firm in the same amount, since these amounts are very recognizable with the 60 cents on the end and 55.

Q Sir, I want to call your attention to the fact that this Exhibit A reflects $20,800 of checks drawn to Robert Martin and cashed by him. Would you be in a position to explain those checks if you were shown those checks?

MR. GARTLIR: Your Honor, I don't believe that is quite an accurate characterization of the exhibit, namely, the statement insofar as it begins "and cashed by him" -- I don't believe that the exhibit shows that, Mr. Ruback, does it?

MR. RUBACK: I will support that with Mr. Lautt's testimony.

MR. GARTLIR: That may be something else. You referred to the Exhibit saying that.

THE REFEREE: That's right, you did say that.

MR. GARTLIR: I don't believe it does say that.

MR. RUBACK: I am sorry.

MR. GARTLIR: The exhibit says nothing other than a series of names.

THE REFEREE: Let's proceed.

BY MR. RUBACK:

Q Mr. Martin, Mr. Lautt has previously testified in connection with Exhibit A that $14,670.60 represents cash checks drawn on the Kings County Trust Company; $32,142.55 represents cash checks drawn on the Hanover Bank; and that $20,800 represents a check drawn to you and cashed --

MR. GARTLIR: Cashed?

MR. RUBACK: Yes.

MR. GARTLIR: Not cashed by him.

MR. RUBACK: A check drawn to him and cashed.

THE WITNESS: Deposited to another account?

THE REFEREE: Let them straighten it out.

MR. GARTLIR: I am not objecting --

THE REFEREE: Let's go ahead.

BY MR. RUBACK:

Q Were any records made anywhere concerning those cash checks or the check of $20,800 drawn to you?

THE REFEREE: I don't know what those cash checks mean. It doesn't mean anything to me.

MR. RUBACK: Checks drawn to cash, your Honor.

MR. GARTLIR: That is not your question.

MR. RUBACK: I will reframe it.

THE REFEREE: No, that is not your question.

MR. GARTLIR: We had this difficulty in the prior examination.

MR. RUBACK: I will reframe my question.

Q Mr. Martin, Mr. Lautt previously testified that there are checks drawn to cash totalling $14,670.60 drawn on the Kings County Trust Company during the year 1960 --

A Would you read that back? Did you say check or checks?

Q Checks.

A You mean this is an aggregate of many checks?

Q That's right, sir.

A Can I see those checks?

MR. RUBACK: All right, let's get the checks.

THE REFEREE: Off the record.

(Discussion off the record).

THE REFEREE: We will take a five minute recess while you get the checks together.

(Recess taken at 2:55 P.M., and hearing resumed at 3:00 P.M.).

CROSS EXAMINATION BY MR. RUBACK (Continued):

Q Mr. Martin I show you a check dated December 9, 1970 drawn on your account at the Hanover Bank for the sum of $20,800 and bears your endorsement on the back, and I ask you whether you made a record of the nature and purpose of that check in any book of account?

A (Witness examines same).

Q Did you understand the question?

A Yes, I did. Would it be possible for me to look at the other checks for this period. I think I know what it is but I don't want to say for sure.

THE REFEREE: The question he put to you was whether you made a record in any book or document or paper which would indicate the issuance of this check and the purpose thereof.

A The answer to that question is there would have been a record in the stub book which I do not have

available to me.

Q Mr. Martin, I show you a check dated the same date for an item marked "counter receipt non-negotiable" and drawn on the Hanover Bank for $1,200.

Can you tell me whether any record was made in any book of account relative to that $1,200?

A The answer to your question on all of these checks will be the same as the first one, the first answer.

MR. GARTLIR: I interpose this objection, Judge, with respect to the question. The question is not whether there is a record in a book of account. The question is whether there is any other record. In my view that would be the correct question. Is any other record, not only limited to a book of account.

A This check was probably cashed for living expenses.

THE REFEREE: Let me see it.

(Same handed to Referee).

A (continuing) It appears it was cashed at the bank and I didn't have a check with me. I probably went over, and it looks like it was before Christmas, and I needed some living expenses for the month or the week.

THE REFEREE: When was the petition filed here? Was it 1964?

MR. RUBACK: 1965.

BY MR. RUBACK:

Q Sir, I show you a check dated June 20, 1960 or to be exact an item called "counter receipt non-negotiable" drawn on the Hanover Bankfor $2,000 on June 20th, 1960, and ask you whether that was reflected in any record or book of account?

A I assume this is the same thing.

Q Is your answer that it was or it was not reflected, sir?

A I think I stated before that if your question is as it was on the first check, that there is no book of account available that would reflect --

THE REFEREE: No, no; that is not the question.

Give me the check.

(Check handed to Referee).

THE REFEREE: You went over to the bank and drew out on one of their own checks or counter receipt $2,000.

THE WITNESS: Right.

THE REFEREE: The question is, did you go back to your office or home and make an entry any place. I don't care whether it was on a paper or

book of account, or notebook, anyplace, that you drew $2,000. and for what purpose?

THE WITNESS: Yes. My secretary would have marked in the stub book page,you know, $2,000 to Robert Martin. She might put living expenses, or purchase of liquor, or something like that.

MR. GARTLIR: I will object to the testimony insofar as it relates to counter checks of the bank.

And so that there is no misunderstanding in the nature of my objection we are talking about checks presented on a counter receipt against the bank, which I do every day of the week and have no record whatever, and neither does any other individual.

THE REFEREE: You can't object to it. If you are objecting I overrule your objection.

MR. GARTLIR: It goes to the vitality or significance of that.

THE REFEREE:Let me ask you a question. You had a large bank account and you just operated by way of counter receipts every week, or every other week, or every day you went to the bank and got a counter receipt and kept drawing money and

made no record any place, would you call that keeping books and records, or books of account?

MR. GARTLIR: Me?

THE REFEREE: Yes.

MR. GARTLIR: I would answer that directly, unequivocally, yes.

THE REFEREE: How would that help your creditors if they want to find out what you were drawing money for?

MR. GARTLIR: It wouldn'thelp them at all, your Honor.

THE REFEREE: Aren't you supposed to keep books and records if you are engaged in business and have a large bank account and you have a lot of drawings from the bank account?

MR. GARTLIR: Now, let me answer that so that there is no misunderstanding. First of all, in this case -- and let me address myself specifically to this -- we are being given selected individual checks out of whole bunches of checks.

THE REFEREE: I am aware of that.

MR. GARTLIR: Okay. The major, the substantial, the large business checks here, I submit, there is a record, another record for that,

THE REFEREE: That's fine.

MR. GARTLIR: That is the point I am making in a semi way of my objection. If a man conducts a million dollars worth of check business and draws counter checks for 10 thousand dollars for living expenses, no, my answer is I do not consider he failed in his duty even under the Bankruptcy Law, which is a different question --

MR. RUBACK: Sir, are we now arguing --

MR. GARTLIR: I am just making my point.

THE REFEREE: I think I would disagree with you. If he drew 10 thousand dollars from a bank and there was no record anywhere to indicate what it was for, I think he would be failing in his duty to his creditors.

MR. GARTLIR: I submit, your Honor, --

THE REFEREE: We will see.

MR. GARTLIR: One more sentence, please.

If a man is in business and he maintains a personal check book, and he occasionally cashes counter receipts at the bank, which is done by the thousands everywhere throughout this country, it is a routine thing, there would be no record of that counter receipt other than in his own

personal check book. That would be a perfectly reasonable and normal thing for him to do it that way.

THE REFEREE: If a man went back and had his secretary make a note in the stub book that would be a proper entry.

MR. GARTLIR: That's what he said.

THE REFEREE: I know. You said if he made no entry anywhere at all, any place --

MR. GARTLIR: I didn't mean that. I meant no other entry anywhere in a book of account other than in his stub book, which he said.

THE REFEREE: The stub book is the perfectly proper and logical place to make the entry, and an accountant working through his stub book could get up a proper listing of what checks were drawn and for what purpose.

MR. GARTLIR: No; I disagree with that, your Honor.

THE REFEREE: He could.

MR. GARTLIR: No, he could not. I am sorry, I don't want to be argumentative.

THE REFEREE: You are.

MR. GARTLIR: I think it is significant on

the argument that I will ultimately have to be heard on --

THE REFEREE: Let's go ahead. Save it for then.

MR. GARTLIR: May I just go on on this one point, at the risk of repetition. My personal checking, and I submit, your personal checking, would not produce that, and I ask you to reflect on that. Your personal check book may have the name of the person but it may or may not say what that item is for. In most instances I submit it would not.

THE REFEREE: Off the record.

(Discussion off the record).

THE REFEREE: Back on the record.

BY MR. RUBACK:

Q Mr. Martin, I show you another counter receipt drawn one day later on the Hanover Bank, for a thousand dollars, and ask you whether you caused an entry to be made in any record indicating the nature and purpose of that withdrawal?

A The answer is the same as before, that my secretary would have marked it in the stub book.

Q Did you see that enty, sir?

A Yes.

Q You did see it?

A Yes, and I think I can identify where these moneys went, and let me make this statement -- I am going to request some more of my records from you right now.

I had to maintain several bank accounts during this period. I was working very closely and was in a highly leverage type of operation. I had large security purchases relative to the amount of capital that I had. I had loans at various banks and had to maintain compensating balances at these varying banks in order to get the loans.

Very often in working closely I needed to transfer money from one bank to another in order to make payment of checks which are in your possession of small amounts. Because it takes three or four days to clear a check and it will be uncollected funds, very often I had to have someone go to the bank, cash a check and put cash in my other account so that I could write checks immediately, and I think if we open all of the checking accounts for all of the months, for instance, in June, we will find where this thousand went, where the 12 hundred went, less perhaps, as the Referee mentioned a hundred dollars or 150 dollars, for what you call pocket money.

I think I would like to see all of the statements and checks for June or any particular month where you show

a check cashed, because these sums of money invariably were deposited to my other accounts to pay bills for checks which you have there and are readily identifiable, and that is why you have not brought them forward.

Q Are you finished, Mr. Martin?

A Yes.

Q Now, you said you were engaged in large security purchases, is that a fact?

A Purchases and sales.

Q Purchases and sales?

A Yes.

Q How large?

A As the purchase and sales confirmations show millions of dollars.

Q Millions of dollars?

A That is right.

Q On your own personal account?

A Correct.

Q So that you were in the business of buying and selling securities?

A No, I was a trader.

Q You were a trader?

A As many people in this country are.

Q Dealing in millions of dollars?

A Yes.

Q Now, as a trader dealing in millions of dollars did you keep any ledgers, journals or other similar books reflecting those millions of dollars of trades?

A With reference to stock trades I kept what I believe most people would keep --

Q Sir, --

THE REFEREE: Let him answer the question.

MR. RUBACK: I am sorry.

A (continuing) -- I kept the purchase and sales confirmations from my broker. I kept the monthly statements from my broker, and when Tracon or Century were involved in a delivery or sale of those securities I kept the debit and credit memos from those firms.

Q The question now, again propounded to you, is this: whether as a trader dealing in millions of dollars you maintained books and records such as ledgers or journals to reflect your purchases and sales?

MR. GARTLIR: I submit, he has answered the question.

THE REFEREE: Let him answer.

A I did not keep a ledgrr book of purchases and sales of securities. I did not keep a journal book of

purchases and sales of securities.

Q Are you stating unequivocally that if you had access to the books and records which Mr. Lautt has examined that you can explain these items and show the entries thereof?

A It is my belief that many --

Q Sir, --

MR. GARTLIR: May the witness pleass be permitted to finish his answer?

THE REFEREE: No, he is not answering.

THE WITNESS: He used the word unequivocal and I want to be careful how I answer because it has the word unequivocal in it.

THE REFEREE: Read the question.

(Last question read by reporter).

A It is my belief that I can satisfy most of the questions that have been raised here concerning these checks.

Q The question is, again: can you by examining those records show entries concerning these cash checks including the one for example, $20,800. and the two counter receipts within two days totalling 3 thousand dollars?

A What do you mean by entries?

Q Notations on a record.

A I just said that I did not keep a journal or a ledger.

THE REFEREE: He did not ask you about a journal or a ledger. Anything, anyplace -- stub books, check stub books, note book, a piece of paper.

THE WITNESS: What I was referring to, your Honor, is that I think what we will find is a consistent pattern whereas on June 21st a thousand dollars was cashed at this bank, or 5 thousand, or 9 hundred -- that on June 21st or 22nd at another bank there will be a statement of a deposit for a similar amount of money.

THE REFEREE: That is not answering the question. That's begging the question. I have been sort of patient with your answers but I think you are hedging now.

The question is simply this: Here are three checks, 3 specific checks. Counsel just wants to know whether there is any place at all a writing -- and you see I am not restricting it to a ledger or a book or a record -- anything at all, any writing, which would indicate the purpose of

these checks.

If you don't know then say you don't know. If you think you know say you imagine so --

THE WITNESS: There is none. The checks are eleven years old and there just isn't a record.

THE REFEREE: How about that one check that is not a counter check, that came out of the check book, didn't it?

THE WITNESS: Yes.

THE REFEREE: Wouldn't there be something on the stub?

THE WITNESS: I wish I had those stub books, believe me.

THE REFEREE: What is the testimony as to those stub books?

THE WITNESS: They were shipped with the books of Robert A. Martin Associates, Inc. and according to the trustee they never received those stub books.

BY MR. RUBACK:

Q Sir, did you visit the office of Leon I.Radin & Co.?

A Yes.

Q And you were accompanied sometimes by either

a counsel or an accountant of your selection?

A On one or two occasions, and sometimes I visited alone.

Q Now, you also had copies of the receipts relevant to the delivery of books and records to either the trustee or to Leon I. Radin & Co.?

A Yes.

Q Did you find that Leon I. Radin & Co. did not have any of the books and records which were reflected in the receipt which you obtained?

A Not to my knowledge.

Q So that they had every book, paper and document for which a receipt was signed and given to you?

THE REFEREE: I don't know whether he went over the books there and checked them against that receipt. That is not a fair question.

THE WITNESS: I also don't know what was delivered from the warehouse. I only got your list of what was delivered.

THE REFEREE: When he went to Radin's office, do you mean to say he would take each book and check it against the receipt to see whether it was delivered to them?

I don't think thatis a fair question.

MR. RUBACK: I withdraw the question, your HONOR.

THE REFEREE: Apparently there was an awful lot of stuff there on that list. I don't know what the quantity was but the receipt is a long one.

MR. RUBACK: Let's limit it.

BY MR. RUBACK:

Q Were there any ledgers --

THE REFEREE: Let me ask this question: When you discovered that those stub books had not been delivered to the trustee -- when was that -- that they had not been delivered to the trustee from the warehouse?

THE WITNESS: Some time during one of the examinations here when the question was asked concerning the stub books and I think I testified I thought there were stub books, and we then looked at the receipt, and I think I then made a visit after that to go through every filing cabinet. It filled quite a bit of space there.

THE REFEREE: Where?

THE WITNESS: At Mr.Lautt's office. And I went through everything and searched and they just weren't there. There were stub books for

Robert A. Martin Associates,Inc.

THE REFEREE: Did you check with the storage house?

THE WITNESS: I did not, no.

THE REFEREE: To see whether they still had them, perhaps?

THE WITNESS: No, perhaps if realized they would be crucial I would have. I don't know if the trustee did.

THE REFEREE: Go ahead.

MR. RUBACK: May I inquire at this time whether it is the intention of Mr. Gartlir to revisit and see whether they can find these records before this examination is concluded?

THE REFEREE: I don't think that is a fair question.

MR. RUBACK: For the purpose of my cross-examination today, your Honor, -- I don't mean that as a fair question if they intend to do it, then perhaps it would be --

THE REFEREE: This is 1971, it is almost 1972, and we are talking abut 1965, some six or seven years ago. Even if they went to the storage company --

MR. RUBACK: I mean at Mr. Lautt's office, your Honor.

THE WITNESS: I made a thorough search there.

THE REFEREE: Off the record.

(Discussion off the record).

THE REFEREE: I thought Mr. Ruback meant at the storage place.

MR. RUBACK: No, I wouldn't presume that, your Honor.

THE WITNESS: Can I confer with counsel?

THE REFEREE: Any objection?

MR. RUBACK: No.

(Witness confers with his counsel).

BY MR. RUBACK:

Q Mr. Martin, I show you a copy of an individual income tax return for the year 1961 and ask you whether this is a true copy of your return for said year, this item having been previously marked as an exhibit on August 5th, 1968?

A (Witness examines same). That is correct.

Q I show you a copy of your income tax return for the year 1962 and ask you whether that is a true copy of your return for the year 1962?

A (Witness examines same). Yes.

Q And I show you a copy of your return, Federal income tax return, for the year 1964, and ask you whether that is a true copy of your return?

A (Witness examines same). That is correct.

MR. RUBACK: I offer the returns for 1961, 1962, and 1964, or copies thereof, as exhibits.

MR. GARTLIR: I understand there was a skipping of a year?

THE WITNESS: There is a return previously testified to that the IRS lost. It was gone over in 21a, '63.

THE REFEREE: It is customary to hand them to counsel before you offer them.

MR. RUBACK: I apologize, your Honor.

MR. GARTLIR: I have no objection, your Honor.

THE REFEREE: Mark them, please.

(Return for 1961 marked Trustee's Exhibit 34-a; return for 1962 marked Trustee's Exhibit 34-b; return for 1964 marked Trustee's Exhibit 34-c.)

Q Mr. Martin, I ask whether these returns reflect your salary from Robert A. Martin Associates, Inc. during the years 1961, 1962 and 1964?

A (Witness examines same) I would say that is correct in reference to 1961, 1962, but I see no reference

to those being salaries from Robert A. Martin Associates in 1964. It just says wages and salaries.

Q In 1964 did you earn any wages from Robert A. Martin Associates, Inc.?

A I don't believe so.

MR. RUBACK: No further questions.

THE REFEREE: Any redirect?

MR. GARTLIR: I would like to reflect for about 30 seconds.

THE REFEREE: You have it.

MR. RUBACK: Your Honor, one more question.

THE REFEREE: Go ahead.

CROSS EXAMINATION BY MR. RUBACK (Continued)

Q Mr. Martin, we are missing the return for 1963. Do I understand correctly that Robert A.Martin Associates, Inc. was out of business that year and, therefore, paid no salary to you?

A That is substantially correct. I would just qualify that by saying if they possibly paid anything it was a very small amount of money in early '63. I cannot be sure.

As you know, in the 21a proceeding there was extensive testimony about Internal Revenue Service losing that return, and I brought in letters showing the correspondence

with them, but I don't think they may have paid me directly during 1963.

Q They did not pay you directly?

A I don't believe so, no.

MR. RUBACK: No further questions.

REDIRECT EXAMINATION BY MR. GARTLIR:

Q Mr. Martin, can you tell me with respect to the creditors listed in the petition and schedules whether any of those creditors were creditors of yours in the year 1960?

A None of the debts in the petition were incurred during the year 1960.

Q So that the debts to which reference was made in the petition and for which you have listed creditors, were subsequent to the year 1960?

A They were subsequent to the year 1960.

MR. GARTLIR: I have no further questions, your Honor, on redirect.

THE REFEREE: Anything further?

MR. RUBACK: Yes, your Honor.

THE REFEREE: Go ahead.

RECROSS EXAMINATION BY MR. RUBACK:

Q Mr. Martin, if I were to ask you the same questions relative to checks made out to cash or counter

receipts for the years 1961, '62, '63 and '64, would your answers be substantially the same?

A I don't think so. I think naturally as you get closer to being 11 years away it becomes increasingly easier to identify checks. I think by that time, especially since 1962, most of my essential payments came from the Irving Trust Company, and it would be easier for me to follow the payments during those years than 1960 which was a more difficult time when I really didn't have any creditors of any kind.

Q When did you not have creditors, sir, what year?

A 1960, you know, except secured creditors -- everyone has some creditors in the normal course of their life, but I mean the creditors that were incurred in the petition as filed.

Q When did you last incur an indebtedness?

A Do you mean since 1965?

Q 1960.

A You mean up until now?

Q Well, between 1960 and the date of the filing of the petition when did you incur indebtedness?

A To the date of the filing of the petition?

Q Yes.

A I would not know.

MR. RUBACK: That's all.

(Witness excused).

THE REFEREE: Do both sides rest on the First Specification?

MR. RUBACK: No, I would like to have Mr. Lautt back.

THE REFEREE: All right.

S I D N E Y C. L A U T T, recalled as a witness, having been previously duly sworn by the Referee, resumed the stand and testified further as follows:

DIRECT EXAMINATION BY MR. RUBACK (Continued)

Q Mr. Lautt, in Exhibit A, which attempts to set forth unexplained items, did you consider the checks drawn to Tracon as an unexplained item?

A I did not.

Q And did you treat it as an explained item?

A I did.

Q And that explanation totalled checks of how much?

A In 1960 it was $31,322.79 from Tracon; in 1961 it was $215,839.03, -- that's it for Tracon.

Q So that you considered all checks of Tracon as bearing an explanation?

A Bearing an explanation.

Q And as having a record for same?

A That's right. They are not part of my figures of unexplained or unclassified payments.

Q Mr. Lautt, did you personally or have a member of your office go through all of the records submitted to you by either the trustee, the warehouse, or by Mr. Martin personally?

A All records that came to our possession which came from the warehouse, the District Attorney's office, the Attorney General's office, your office, and from Mr. Martin, when they were settled in our office I instructed one of my men to go through all of the books and records plus bank statements, any books of any kind, or anything which seemed like a record, and separate the records of the corporation from that of the individual.

We received, as I recall, several four-drawer file cabinets, consisting of papers, correspondence of all kinds, and I told him I did not expect him to go through each of those papers and letters for the purpose of separating them, but any books, checks, bank statements, anything that appeared to be a recording of any kind with the exception of correspondence, to try and separate those, and he did that for me.

Q When you say recording you mean recording pertaining to Robert Martin?

A Or to Associates -- to Robert Martin in particular -- to separate them in the bankrupt's pile of records.

Q And your analysis was based on the result of that separation?

A Yes.

MR. RUBACK: No further questions.

CROSS EXAMINATION BY MR. GARTLIR:

Q Mr. Lautt, do I understand that you confined your inquiry and examination of records to the items that you just referred to, namely, checks, bank statements and books?

A Of the bankrupt?

Q Yes.

A Yes.

Q And you excluded from your inquiry anything else that was given to you, any other papers of the bankrupt that were given to you from these various sources?

A By papers, as I explained,I instructed my man not to go through every letter in the four-drawer filing cabinets for the purpose of seeing if this was a piece of correspondence between Mr. Martin or the Associates -- they were in a four-drawer filing cabinet, those identified

as belonging to the corporation -- but if he found in there bank statements, books, or any documents that appeared to be a bookkeeping record, to take it out, examine it and see whether it was the property of the individual or the corporation.

THE REFEREE: If it belonged to the corporation you did not look through it?

THE WITNESS: I did not.

Q I understand about the corporation, you did not look through it. As a matter of fact you specifically didn't look through it.

A That's right.

Q We have that clear?

A That's right.

Q I would like to dwell on the other part for a moment, Robert A. Martin, and you used the word what appeared to be a "bookkeeping record", did I understand you to use that word?

A That's right.

Q What did you tell your man -- did you do it yourself or your man?

A My man.

Q Now, what did you tell your man about what he was to consider to be, if anything, a bookkeeping record?

A A cash book, a bound book of any kind.

Q A bound book?

A A bound book, a loose-leaf book, a check stub book, cancelled checks, bank statements, any substantial collection of records, bound in some manner or other. We found, for instance, a confirmation list that had been brought into these hearings, that that had been separated as belonging to Mr. Martin. But not to go through every document in the file --

Q I understand that --

A Well, those were my instructions.

Q You had instructed --

A I am explaining my instructions to my man.

Q You used the word "bound"?

A Bound or loose-leaf, that's right.

Q But you just used the word --

THE REFEREE: He said, bound or loose-leaf.

Q You mean loose-leaf in the sense that it is collected in one place, is that true?

A Yes, that's right.

Q Did you receive such instructions, namely, to use the delineation of bound or loose-leaf, or did you decide that?

A I decided that.

Q So you didn't have any instructions from the trustee or counsel or whoever instructed you to do what you were doing to use those words?

A No.

Q So this is a subjective determination that you made yourself, that if it was not a bound record or loose-leaf record you wouldn't consider it; is that right?

A If it was a single piece of paper he was not expected to go through all of this mass of single pieces of paper.

Q I heard you say that,but I want to dwell upon the words you did use - -

A I used those words too. I am telling you what words I used.

Q I repeat, you dwelled upon and you analyzed this material in accordance with a determination as to whether it was a bound or loose-leaf record; yes or no?

A No, because it was elaborated upon and extended --

MR. GARTLIR: I think the witness answered it.

THE REFEREE: After all, Mr. Lautt testified here as early as 1969 on this hearing. If you thought there was any other material that could have filled up some of the gaps that Mr. Lautt said

existed, the books and records were available to you and your client in Mr. Lautt's office, to go up there and see whether there were any documents that they didn't look at, to fill these gaps.

MR. RUBACK: Will Mr. Gartlir concede --

THE REFEREE: No, no.

MR. RUBACK: One question about his visiting the office. Will Mr. Gartlir concede --

THE REFEREE: He said he was up there.

MR. RUBACK: I mean, between the last hearing and this one.

THE REFEREE: I don't know.

MR. RUBACK: I would like a concession.

MR. GARTLIR: I am not on trial.

MR. RUBACK: I can put the bankrupt on. I merely would like a concession that the bankrupt accompanied by Mr. Gartlir visited the offices of Mr. Lautt --

THE REFEREE: Mr. Lautt can testify to that. Did they?

THE WITNESS: They did.

THE REFEREE: Since the last hearing?

MR. LAUTT: Yes.

THE REFEREE: Go ahead.

BY MR. GARTLIR:

Q Did you ever ask the bankrupt himself to assist you in the work that you did?

A I never did.

Q Or to explain any of what the Referee has a moment ago referred to as what can be gaps in the record?

A I never did.

Q Now, Mr. Lautt, did you at any time ever make a determination or attempt to make a determination or an analysis, with or without instructions of the principal as to how the losses occurred in this bankrupt estate?

THE REFEREE: Incidentally, let me correct something on the record. I did not say there were gaps. I said that Mr. Lautt may have considered to be gaps. I am not making any findings yet.

MR. GARTLIR: I understand, your Honor. I only used the word gap --

THE REFEREE: I don't want that thrown in my face later that I made a pre-judgment here.

MR. GARTLIR: I withdraw that.

May I have my question read back to the witness?

THE REFEREE: Read the last question.

(Last question read by reporter).

Q How the bankrupt incurred the losses --

THE REFEREE: How does that apply to this specification on books and records?

MR. GARTLIR: It will apply --

THE REFEREE: You think it does?

MR. GARTLIR: Yes, I think it may.

THE REFEREE: I will allow it. I didn't want you to wander.

BY MR. GARTLIR:

Q Was it ever done?

A It wasn't done by me. It wasn't done by my firm, no. I explained it to the attorneys for the trustee --

Q You did not do it?

A No, but I would like to explain that -- I would like to explain why --

Q I will take your explanation. I did not ask you why but I will take it anyway.

A All right, I will stop at that point.

MR. GARTLIR: That's all.

THE REFEREE: Both sides rest on the first two specifications?

MR. GARTLIR: May we have some indication as to what the situation is with respect to any other specifications?

MR. RUBACK: Your Honor, I think I can get through with the next specification in 15 minutes.

THE REFEREE: I won't give it to you.

MR. RUBACK: I understand. I thought there would be one more specification.

THE REFEREE: Which specification?

MR. RUBACK: 5-J, and then I will withdraw the balance, your Honor. That is the only reason why I asked if your Honor would want to spend another ten minutes.

THE REFEREE: 5-J is knowingly and fraudulently made false oath at the examination at the first meeting about the application made to the Chemical Bank.

You withdraw all the others?

MR. RUBACK: Yes.

THE REFEREE: You may step down.

(Witness excused).

THE REFEREE: Off the record.

(Discussion off the record).

THE REFEREE: Adjourned to January 10th at 2 o'clock, and I will hold the afternoon.

(Adjourned to January 10, 1972, at 2:00 P.M.).

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Witness	Direct	Cross	Redirect	Recross
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Exhibits of Trustee

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34-b	Copy of income tax return for 1962.	"
34-c	Copy of income tax return for 1964.	"

TRANSCRIPT OF PROCEEDINGS BEFORE HON. ASA S. HERZOG DATED FEBRUARY 24, 1972

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
(In Bankruptcy)

In the Matter
of

ROBERT A. MARTIN,
a/k/a H. ALLAN MARTIN,
a/k/a ROBERT ALLAN MARTIN,

Bankrupt

No. 65-B-153

United States Court House
Foley Square, New York, N.Y.

February 24, 1972 - 2:00 P.M.

Before:

HON. ASA S. HERZOG Referee

ADJOURNED HEARING ON SPECIFICATIONS OF OBJECTIONS TO BANKRUPT'S DISCHARGE

- - - - -

Appearances:

Messrs. LEVY, LEVY & RUBACK
Attorneys for Trustee
225 Broadway
New York, New York
By: ROBERT I. RUBACK, Esq., of Counsel

BEATRICE R. GOTTLIEB
Official Court Reporter
Room 230, United States Courthouse
Foley Square, New York, N. Y. 10007
REctor 2-3933

BG/r

A P P E A R A N C E S (Continued):

Messrs. HOFHEIMER, GARTLIR, HOFHEIMER, GOTTLIEB & GROSS
Attorneys for Bankrupt
61 Broadway
New York, New York
By: BERNARD GARTLIR, Esq., of Counsel

ALSO PRESENT:

SIDNEY C. LAUTT, C.P.A.

MR. ROBERT A. MARTIN

- - - - -

THE REFEREE: We are on specification 5-J?

MR. RUBACK: That is correct, your Honor.

Mr. Martin,will you take the stand, please.

R O B E R T A. M A R T I N, recalled as a witness by the Trustee, having been previously duly sworn by the Referee, was examined and testified further as follows:

DIRECT EXAMINATION

BY MR. RUBACK:

Q Mr. Martin, I show you a photocopy of a financial statement executed on January 7, 1963 and ask you whether the same bears your signature?

A (Witness examines same.) It does.

MR.RUBACK: I offer it in evidence.

MR. GARTLIR: May I see it?

MR. RUBACK: Yes. (Handing same to Mr. Gartlir.)

MR. GARTLIR: Mr. Referee, may I have it indicated, not that I intend to have anything further than this statement, at the conclusion of our last hearing trustee's counsel indicated he would proceed solely o 5-J with respect to one application, namely, an application made to the Chemical Bank, and withdraw all others. I take it that this is now an amendment of that position.

THE REFEREE: 5-J refers to applications for loans made to the Chemical Bank, the Beneficial Finance, the Chase Manhattan and the Bankers Trust.

MR. GARTLIR: I understand, but the statement was that he intended to proceed solely with the application --

THE REFEREE: I did not understand him to say that he would limit it to that.

I made the statement that 5-J is knowingly and fraudulently made false oath at the examination at the first meeting about the application made to the Chemical Bank. I just did not read the whole specification. I don't see where he said he

would limit it to that.

MR. GARTLIR: May I ask some questions either of trustee's counsel or on the exhibit before I determine whether to object to it or not?

Are all these writings on this paper intended to be writings that were there originally -- this is just a Xerox and I don't know whether the writings on it were on it originally or not.

May I show it to you, Mr. Referee?

THE REFEREE: No.

MR. GARTLIR: Which writings were not on there.

MR. RUBACK: The writings are my pencil marks, the file number.

MR. GARTLIR: Is it possible you don't have the original or a copy?

THE REFEREE: Don't ask me these questions, sir.

MR. GARTLIR: Then I will object to it.

THE REFEREE: Make your objection.

MR. GARTLIR: I object on the ground that this appears to be a Xerox copy of a document unless there is some indication that the copy is not in existence --

THE REFEREE: The original.

MR. GARTLIR: The original or a duplicate original.

The original may be somewhere else. There are writings on here that I don't know are part of the original record.

THE REFEREE: Sustained.

MR. RUBACK: If your Honor pleases --

THE REFEREE: Lay some background for it. Lay some foundation for it. You just cannot offer a Xerox copy of something in evidence. Ask some questions and lay the background and maybe you will get it in. I am not saying that ultimately it cannot be admitted into evidence.

MR. RUBACK: May I consult with Mr. Lautt for one second?

THE REFEREE: Yes.

(Mr. Ruback confers with Mr. Lautt.)

MR.RUBACK: May I speak off the record for a moment, your Honor?

THE REFEREE: Yes, if counsel has no objection.

MR. GARTLIR: I have no objection.

THE REFEREE: Off the record.

(Discussion held off the record.)

MR. GARTLIR: I withdraw the objection.

THE REFEREE: Mark it in evidence.

(Photocopy of financial statement executed

January 7, 1963 referred to marked in evidence as Trustee's Exhibit 35.)

DIRECT EXAMINATION

CONTINUED BY MR. RUBACK:

Q Mr. Martin, I show you a financial statement delivered to the Bankers Trust Company and ask you whether that bears your signature? This is a photocopy.

A (Witness examines same.) It does.

MR. RUBACK: I offer it in evidence.

THE REFEREE: Any objection?

MR. GARTLIR: I have not seen it. (Examines same.) No objection.

THE REFEREE: Mark it.

(Financial statement delivered to the Bankers Trust Company referred to marked in evidence as Trustee's Exhibit 36.)

Q I show you a financial statement issued to the Beneficial Finance Company in November of 1963 signed R. Allan Martin, and ask you whether that bears your signature?

MR. GARTLIR: I think I ought to interpose a mild objection that the paper being referred to as a financial statement bears at its head "Application for credit."

THE REFEREE: Yes.

A In addition it is my signature, the answer to the question is yes, but in fairness I want to point out that this does not to the best of my recollection represent the application but only one sheet, possibly the last sheet where the signature goes on the application that had pages in front of it.

THE REFEREE: Let me see it.

(Same handed to the Referee.)

THE WITNESS: There is page 1 and 2 where there is quite a bit of information asked for.

THE REFEREE: How about this paper?

MR. RUBACK: I offered it in evidence.

THE REFEREE: Show it to counsel.

MR. RUBACK: I have given counsel a copy.

MR. GARTLIR: No objection.

(Financial statement issued to the Beneficial Finance Company in November 1963 marked in evidence as Trustee's Exhibit 37.)

Q Mr. Martin, I show you a paper which bears on top the word "Information" and ask you whether that is the first page of Trustee's Exhibit 37 to which you just referred?

A (Witness examines same.) No. This is not it. This

is something else.

Q Mr. Martin, I show you a photocopy of an income tax return for the year 1962 and ask you whether it bears your signature?

A (Witness examines same.) It does.

MR. RUBACK: I offer it in evidence.

MR. GARTLIR: I think that was marked. Isn't it already in evidence?

THE REFEREE: I do not want it marked twice because it will only confuse me.

MR. GARTLIR: It was marked in a previous hearing as Exhibit 34-B on page 255, Exhibit 34-B of the trustee.

MR. RUBACK: Your Honor, the transcript does reflect income tax return for '62 was marked in evidence but I do not have that marked copy, and for that reason I offer it, so may we just deem this copy as Trustee's Exhibit 34-B.

MR. GARTLIR: Mark it again Exhibit 34-B. So there will be two and if the record indicates it was marked twice --

THE REFEREE: Mark it Exhibit 34-B of November 10th.

MR. RUBACK: I am sorry, your Honor, I have it.

I offer in evidence at this time, your Honor, transcript of the following questions and answers made by the bankrupt on May 12, 1966.

THE REFEREE: Do you have the original there?

MR. RUBACK: Yes, your Honor.

THE REFEREE: Have you a copy you can work from?

MR. RUBACK: I --

THE REFEREE: Go ahead.

MR. GARTLIR: What page?

MR. RUBACK: Page 90:

"Q - Mr. Martin, what would you call an application for a loan which sets forth a man's assets, liabilities and income?

"A - I would call that a financial questionnaire.

"THE REFEREE: It is a financial questionnaire and after you fill it in and sign it what is it?

"THE WITNESS: It is a financial statement.

"THE REFEREE: All right.

"THE WITNESS: I never denied that. I didn't follow what you were saying at first and I asked it to be clarified.

"BY MR. RUBACK:

"Q - Mr. Martin, is there any question now in

your mind but that an application for credit sets forth information concerning assets, liabilities and income perhaps of the individual and is in fact a financial statement?

"A - Yes, I quite agree with you.

"Q - Now, since you agree with me will you now tell me whether you want to change any of your testimony wherein you stated that you did not give a financial statement?

"A - Yes.

"Q - Where would you want to change it?

"A - Yes, we could have saved all this time.

"THE REFEREE: You could have saved all this time not we. Go ahead.

"A - I believe on Chase Manhattan Bank and perhaps to some limited extent on Beneficial Finance there was a financial questionnaire filled out.

"Q - Those were the only two?

"A - I believe so.

"Q - Now, when you submitted the so-called questionnaire or financial statement to the Chase what was your purpose in submitting it to them?

"A - This loan of Chase Manhattan Bank was

arranged by one of my creditors to whom I owed money to, he was very close with Chase Manhattan and he explained to them that I had a debt with him, and I had some difficult troubles and I had lawsuits, and that my business had failed, and he felt that they would grant me the loan but he would get the proceeds of the loan to repay him the debt, and that I would repay the bank back in installments which would be a little less burdensome for me, and that if I did not pay them he would assume the obligation. So in effect the bank was lending me the money, but with his guarantee, and in effect I was paying him out with the bank as a convenience.

"Q - When did this take place?

"A - I believe in 1963.

"Q - When this application was made by you you did give truthful answers, did you not?

"A - Yes, I did.

"Q - No question about that?

"A - I don't believe so."

MR. RUBACK: Your Honor, I am now skipping a few questions.

"Q - So do I understand correctly, you gave the

Chase Manhattan Bank a financial statement which you considered to be accurate?

"A - Yes."

MR. GARTLIR: Where did you skp to?

MR. RUBACK: Down to the botton of page 93.

"Q - So you gave it to them for the purpose of borrowing money so you could complete another financial transaction?

"A - All right, I will accept that."

DIRECT EXAMINATION

CONTINUED BY MR. RUBACK:

Q Now, Mr. Martin, you do recall giving those answers to the questions which I just described?

A Yes.

Q And when you gave those answers were you not referring to these exhibits marked today as Trustee's Exhibits 35, 36 and 37?

A When I gave those answers I was not referred to any exhibits.

Q Well, did you give the Chase Manhattan Bank any financial statement or application for credit in January 1963 other than the one which has been marked today as Trustee's Exhibit 35?

A Yes.

Q When did you give them a statement other than that in January of 1963?

A During late December and early January of 1963.

Q Do you have a copy of that with you today?

A No, but if I knew you wanted it we could have subpoenaed it from the bank.

If you recall in my previous testimony during the 21a I had suggested that you obtain the entire file from the Chase Manhattan Bank.

Q Now, have you given the Bankers Trust Company in November of '65 any financial statements other than the one which has been marked today in evidence?

A I did not.

Q Did you give the Beneficial Finance Company in 1963 any financial statements other than that which was marked today?

A I do not recall.

Q Now, Mr. Martin, did you set forth all of your liabilities as of January 7, 1963 in Trustee's Exhibit No. 35?

MR. GARTLIR: What bank is that?

MR. RUBACK: The Chase Manhattan Bank.

THE WITNESS: Would you repeat the question?

THE REFEREE: Read it.

(Last question read by Reporter.)

A I did not. I only set forth the loans outstanding that were required by the bank.

Q Are you now saying that the statement --

A I am sorry -- just for the record the word liabilities does not appear anywhere under this section of the application.

Q Mr. Martin, I call your attention to that part of the application which reads "list all loans or debts now outstanding, if none please state none", and ask you whether you correctly completed the questions propounded in that application?

THE WITNESS: Would you repeat the question?

THE REFEREE: Read it.

(Pending question read by Reporter.)

A The list of outstanding loans or debts outstanding is not a complete statement of the amount of loans and debts outstanding at the time.

Q Is it therefore a fact that you did not list in Trustee's Exhibit 35 all of your debts as at January 7, 1963?

A All of my debts are not listed on this application.

Q Would you therefore agree that that application was false?

MR. GARTLIR: Your Honor, I object to the form of the question.

THE REFEREE: Sustained. False means a lot more than untrue.

Q Would you therefore agree that that statement is incorrect in that it fails to list as required all loans or debts now outstanding as at January 7, 1963?

MR. GARTLIR: Objected to as argumentative.

THE REFEREE: Well, he can ask him whether at the time he made it this statement was untrue.

A At the time I made the statement it was true and I complied with every instruction that the bank gave me. There was previously attached to this a rider, a list of debts that was so long that the bank told me to just stop it, and even marked on the exhibit "let stand because this loan is going through", and this was not as I testified to on numerous occasions, Mr. Ruback, not an extension of credit, not a renewal of credit, but simply a transfer of an existing bad debt on a loan application where it was marked in bold face across it "applicant is out of business".

Q Do you recall the name of the person at the Chase Manhattan Bank to whom you made this statement in January 1963?

A Mr. Robert Roe, R-o-e.

Q Now, I show you Trustee's Exhibit 36 which asks for the names and addresses of your lenders and the amounts of the loans and ask you whether you completed same?

A No, at the direction of the bank this section is left completely blank.

Q Now, which person at the bank --

MR. GARTLIR: Which bank?

MR. RUBACK: Bankers Trust Company.

Q Which person at the Bankers Trust Company made that direction?

A I am going back quite a number of years and my guess is his name began with a V and his name is either Vale or Vile (witness uncertain of spelling).

Q I show you Trustee's Exhibit 37 and ask you whether you set forth in response to the question for a list of all of your creditors and the indebtedness the word "None"?

A Is the word "None" written in the space?

Q I asked you whether you put it in?

A Which question are you asking?

Q I am asking you whether you inserted the word "None" on Trustee's Exhibit 37 which refers to the list

of creditors?

A That is correct.

Q Was it true that you had no creditors as of November 1963 when you wrote in the word "None"?

A I had creditors at that time.

Q Now, Mr. Martin, these applications were made within a span of a few months, were they not, starting in January 1963 and ending not later than November 1963?

A These applications were made within a span of a few months.

Q Now, as a matter of fact what were your obligations other than those which you had guaranteed personally, your direct indebtedness to others, undisputed, what was the total amount of your indebtedness?

A I have no way of knowing.

Q Approximately?

A Either then or now I had no way of knowing. As you are aware there was substantial collateral, substantial secured and unsecured creditors, claims, notes receivable due to me, the market had crashed and I was in no position to make an evaluation as to my assets or liabilities at that time.

Q Mr. Martin, were you in a position to make an evaluation as at March 1965?

A An evaluation is made in my petition filed herein and, of course, in a substantial part of it it is listed as undisputed creditors.

Q Sir, in March of 1965 when you filed your petition in bankruptcy did you set forth a list of your creditors?

A Yes.

Q And did you set forth the dates when each of the debts were incurred?

A I am not sure.

MR. RUBACK: Does your Honor have the original schedules?

THE REFEREE: No.

Q I show you a photocopy of the schedules and ask you whether this is a copy of the original filed by you in this court?

A (Witness examines same.) I assume so.

Q Now, sir, did you in Schedule A-3 set forth the names, the addresses of each of the creditors and the dates when the debts were incurred?

A These are creditors who were outstanding in 1965?

Q These are your schedules. Please tell me whether they were creditors whose debts were outstanding in March of 1965?

A This was prepared with the help of my counsel and I assume so.

Q Did you give counsel the information?

A I assisted. Much of it was taken from the litigation files and records that were available to us.

Q Is that a true and correct list?

A To the best of my knowledge it is.

Q Does that list set forth the dates of the indebtedness?

A It does.

Q For example, does it correctly set forth that there was due to Michael M. Berlin the sum of $4,000 on a liquidated debt incurred on November 13, 1961?

A It does.

Q And does it, for instance, correctly set forth that a judgment had been obtained against you by the Trade Development Bank for the sum of $50,000 on May 1962?

A That is what it states.

Q And do I correctly assume from a review of your schedules in bankruptcy and the debts which you have listed therein as undisputed and liquidated, that as of January 1963 you were indebted to Divers Creditors for approximately $275,000?

A The two dates that you mentioned, I cannot comment on the others, are accommodation endorsements on notes by other parties.

THE REFEREE: Whether they are or not, they are liabilities.

THE WITNESS: They are liabilities but whether they are liquidated and undisputed, counsel listed them under that section but I was an accommodation endorser.

Q Now, Mr. Martin --

A In other words -- just a second -- in my view they were not direct obligations of mine.

Q Mr. Martin, did you advise your counsel which of the debts were disputed and which were not?

A I did not advise my counsel.

Q Did he refer to any records when he --

A I assume he did.

Q Did you in your schedule mark as disputed those creditors whose claims you were disputing?

A Yes.

Q And did you mark in your schedules those claims which you considered to be unliquidated?

A By unliquidated you mean the amount not known?

Q What did you mean by the term unliquidated when

you had them so marked in your schedules?

A Mr. Ruback, I did not mark the schedules unliquidated or liquidated. These are form schedules and my counsel who was not too experienced in this field had to make an interpretation as to what that meant.

We consulted on this and we listed as unliquidated debts debts that we could not determine the amount of, if any.

As to liquidated debts we listed amounts where at least we knew what the claimant was claiming in terms of dollars despite whether it might be as an accommodation endorser, or whether it would be disputed or in litigation or paid by a third party.

Q When a claim was in dispute as determined by either you or your counsel, was it so marked?

A I believe so.

Q Now, Mr. Martin, if you excluded all of your creditors whose claims you have marked as disputed, and also excluded all of the creditors who you have noted as unliquidated, would the balance still result in approximately $275,000 unliquidated claims as at January 7, 1963?

A No.

Q What would that balance be?

A I don't know, but I would say to you that in January 1963 which is the first month, early in 1963, a schedule such as this could never have been prepared. I had no way of knowing at that time whether notes that I had endorsed as accommodation endorser would be paid, was being paid, the results of it. It was only in 1965 that I first had any idea of what the status was. Some of these notes were not even due until after 1963. They first went into default then.

Q So did you know in March of 1965 what your unliquidated indebtedness was?

A Only approximately.

Q What was the approximation?

A According to the schedules $275,000. Of course, there are cross duplications between secured creditors, unsecured creditors, and duplications of claims that fit into multiple categories which presented a problem. For instance, Tracon's debt was disputed by us, but it was a secured creditor, and so the question arose should I put it under secured creditor, should I put it under disputed or should I put it under both. So many of the lists are overlapping and duplicated.

Q Mr. Martin, I show you Trustee's Exhibit 34-B

which is a copy of your income tax return for the year 1962; is that correct?

A (Witness examines same.) Correct.

Q When did you file that return?

A 1965, September 16.

Q Of 1965?

A Correct.

Q Sir, I refer you to the schedule relating to interest payments during the year 1962 and ask you to tell me how much you claim as a deduction for interest?

A For 1962?

Q That's right.

A $69,644.

Q And did that include interest to various banks?

A $3,240 to banks.

Q Did it include interest to Tracon?

A Yes, $36,750.

Q So that as at September 1965 when you filed this return you were aware, were you not of the amount of your indebtedness as at the end of 1962?

MR. GARTLIR: I don't think I quite get this. I would like to have it clarified.

MR. RUBACK: I withdraw the question.

Q You testified a moment ago that you paid during

the year 1962 the sum of $69,644 in interest. Was that money actually paid?

A That is correct.

Q Is that a true statement?

A I hope so.

Q What do you mean when you say you hope so?

A It is supposed to be a joke, Mr. Ruback.

THE REFEREE: I understood what he meant, otherwise he has a false return to the Government. That is what he meant. Don't jump him for a little thing like that.

MR. RUBACK: I didn't intend to. I apologize.

DIRECT EXAMINATION

CONTINUED BY MR. RUBACK:

Q Mr. Martin, was the indebtedness for which you paid interest during the year 1962 repaid by November 1963?

A A large portion of it had been liquidated.

Q How much?

A I have no way of knowing.

THE REFEREE: By liquidated, you mean paid?

THE WITNESS: Paid.

Q Go ahead.

A I would say several hundred thousand dollars. It

is obvious to anyone looking at this that most of these interest payments were to Tracon Corporation, Max Jacob, Ltd., which were factors who held securities, notes receivable and bonds as collateral.

As they sold these out during adverse market conditions, the loans and indebtedness that might have been reflected by such large interest payments were reduced substantially.

Q Sir, you did have a separate schedule marked Schedule A-5, accommodation paper, in your schedules in bankruptcy, did you not?

A That is correct.

Q And you did have a separate schedule for those creditors which held security marked Schedule A-2?

A That is correct.

Q So that there is no misunderstanding, when I asked you the question before about the undisputed and unliquidated claims as of January 7, 1963 I was referring merely to those which are reflected in Schedule A-3, and I again ask whether as of January 7, 1963 there were still due to those creditors approximately $275,000 as liquidated and undisputed?

A In 1963?

Q As at January 7, 1963.

A No. This is as of March 1965. The only reference to the dates listed there is the date that the indebtedness or purported indebtedness occurred.

Q Mr. Martin, as at November 13, 1963 --

A Excuse me. Can I confer with my counsel for just a minute?

THE REFEREE: Yes. Let's take a recess.

(Recess taken at 3:15 o'clock p. m. and hearing resumed at 3:30 o'clock p.m.)

THE REFEREE: All right, let's go ahead.

MR. RUBACK: Mr. Referee, I withdraw the last question of this witness and I would like to put Mr. Lautt on the stand.

THE REFEREE: Wait a minute. He is entitled to examination.

CROSS EXAMINATION

BY MR. GARTLIR:

Q Mr. Martin, trustee's counsel has questioned you regarding three certain applications for credit, the Chase Bank, Bankers Trust and Beneficial Finance, and I ask you first, if you will please, Mr. Martin, what were the circumstances of the application for credit in the Chase Manhattan Bank; what was the nature of this loan? Would you tell the Referee that, please?

A The firm of Max Jacob, Ltd. who were stock factors had advanced money to me personally on securities. They banked at the Chase Manhattan Bank, Pennsylvania Station branch.

When they had liquidated the securities held against my loan there was a net deficit in the account. Mr. Jacob went to his bank, the Chase Manhattan Bank, at which I did not have an account, or never had an account at, and because he owed the bank a substantial amount of money from having borrowed money to lend to people such as myself on securities, he was trying to work out a program whereby his creditors came to the bank, took loan applications --

THE REFEREE: His debtors.

THE WITNESS: His debtors, I am sorry.

A (Continuing) And when the loans were granted the debtors would endorse the proceeds of the loan to the Chase Manhattan.

The effect of these transactions and this transaction in particular was to transfer to me an indebtedness that the Chase Manhattan had only with Max Jacob, Ltd., so in effect now they not only had Max Jacob, Ltd. as an unsecured creditor but they also had Robert Martin on this particular loan, and the bank

felt that with installment payments of small amounts each month that some of the indebtedness could be liquidated to the extent that any of the installments might not be paid they still would be ahead by the amount of installment payments that were made.

I went to the Chase Bank, the loan was all arranged. I filled out three applications in total. The first one failed to pass through because Robert A. Martin Associates, Inc. had some publicity about being cited for net capital and it had been picked up by the Chase loan committee or the office downtown and put in the file.

Then there was a meeting held where they explained that this was not a new loan but in effect really a co-signer, an additional person going on a loan of Max Jacob.

As of this time there was a second application made on which there was a rider attached listing some of the lawsuits and obligations that I had at that time, and that one was rejected.

On this one they simply said to put down some of your bank debts and just put it down and it would be put through.

THE REFEREE: The net effect of this was that

the bank did not advance any cash.

THE WITNESS: No, I got no money from them.

THE REFEREE: Neither did Jacob. What happened was they just reduced his debt by that amount.

THE WITNESS: Correct, and he remained contingently liable in case I did not pay the installments, and to the extent that I made about 12 payments to the bank it was not a bad plan.

THE REFEREE: They were ahead.

THE WITNESS: They were ahead.

CROSS EXAMINATION

CONTINUED BY MR. GARTLIR:

Q Can you tell us the significance of the words-- I don't know that you did in your direct testimony -- written across the place where you were supposed to list your obligations and debts -- what are those words?

A "Let it stand." I can only give my opinion as to this and it has been several years but I assume any person that owes another bank $60,000 unsecured would not be a good risk for a $4,000 loan. So ordinarily I guess on the face of it they would reject me but they wanted it to go through so they put "leave it alone."

Q Is that the reason, Mr. Martin, there were no obligations listed in that space?

A On this application. By the way, even the date indicates there had been prior applications because the date has been changed and crossed out several times.

Q With respect to the application to the Bankers Trust Company, Exhibit 36, to which the testimony has referred, I call to your attention, and let the record indicate that there are no entries made, none or otherwise, that is the word "None" does not appear here with respect to other obligations of the borrower, is that correct, Mr. Martin?

A Correct.

Q Will you explain to the Referee the circumstances of the making of that application?

A This loan is almost exactly the same as the previous loan.

Through one of my factors I had a collateral loan with this bank for about $7500 against stock which required no application. When the market collapsed the stock became worthless and the bank now had a stale loan on its books.

The loan officer wanted to try to recover something and at the same time tried to work with me hoping that I could stay in business, which I was trying to do. He suggested first getting the collateral loan off his books

and he would put through this application which would give me an installment loan. I endorsed the check of this loan to get the collateral loan off the books and I began payments on this loan. Again, to the extent that several payments were made the loan was reduced and I think the final balance came down to one or two thousand dollars. I don't recall exactly.

Q Did they call that an exchange loan?

A A continuation of the first loan. A new form of payment. When these loan offices make a mistake, as they did in lending me the money -- they become worried, they are reviewed, they are criticized, and they want to go along with you and get rid of something that became stale, and they want to get it off their books and try some other form of payment.

Q With respect to Exhibit 37, the loan application to the Beneficial Finance Company --

A The Beneficial is a sad story. This loan was taken by an employee of mine, Kenneth Finochiaro. He had a loan and when I had to discharge him as an employee he could not make the payments to them. I in effect came to Beneficial and became what they call a co-maker or co-endorser. They took me and I endorsed it and got him relieved of his obligation, and I think this loan

was either repaid in full or reduced to practically nothing. I think this loan was repaid in full.

Q Did you have any conversation with the bank officer in regard to filling out this application?

A There are two pages here, two front pages which I do not have here, they ask "Do you have a home", "Do you have a mortgage against it" -- there is more to it than just this. This was just like the last page. This again was filled out to the extent that they asked me to, and when I started to tell them how many creditors I had they said just list other finance companies, and I don't recall, perhaps banks, and they wanted me as a co-maker on this loan.

THE REFEREE: They had nothing to lose. They were not advancing any money. You just came in and you were joining in as a co-maker.

MR. GARTLIR: And that is the reason those applications were made that way.

THE WITNESS: And that is why they were in a short period of time like that.

MR. GARTLIR: That's all.

THE REFEREE: Anything further?

MR. RUBACK: Mr. Referee, I think that this Court would recognize in view of the testimony given

today it would be incumbent upon me to subpoena --

THE REFEREE: I am not going over. We will finish this case. I was going to give you an adjournment based on technical grounds --

MR. RUBACK: May I complete my statement?

THE REFEREE: You just listen to me a moment. This case started May 19, 1969. Now you just go ahead and finish it.

MR. RUBACK: May I at least for the record make my statement?

THE REFEREE: Make your statement on the record.

MR. RUBACK: In view of the testimony given by the witness today which I do not want to characterize --

THE REFEREE: You had better not characterize it.

MR. RUBACK: In view of the fact that he has named certain people with whom he had alleged conversations at the Chase Manhattan Bank and the Bankers Trust Company, I think that a short adjournment merely for the purpose of subpoenaing those people and putting them on the stand for the purpose of ascertaining whether the bankrupt has given truthful testimony today is important.

THE REFEREE: Let me have the first meeting or

the 21a examination transcript.

MR. RUBACK: This one? (Exhibiting same.)

THE REFEREE: Yes. As long as you are going to make a record, let's make it now.

Are you finished with your statement?

MR. RUBACK: Yes, your Honor.

THE REFEREE: The Court wants to make a statement.

The first meeting of creditors in this case took place March 22, 1965, seven years ago.

That it was adjourned from time to time and Mr. Martin was examined here at the adjourned first meeting for 334 pages of transcript.

The specifications here were filed on December 2, 1968. They came on for a first hearing May 19, 1969. Hearings have been held from time to time and as of the last hearing there were 268 pages in the transcript.

I decline to grant any further adjournment on the ground that to grant such adjournment would be nothing more than harassment of this bankrupt.

There has been every possible opportunity given to the objectant to examine, to have pre-trial

examinations, to have 21a examinations, to have examinations at the adjourned first meeting. There was absolutely no excuse to ask for further examination at this time. I insist that this case be brought to a conclusion this afternoon.

Now, proceed.

MR. RUBACK: Now, your Honor --

THE REFEREE: I do not want to hear any more. I want you to proceed.

MR. RUBACK: I will.

May I go off the record?

THE REFEREE: I want you to go ahead.

MR. RUBACK: All right.

No further questions.

THE REFEREE: You may step down.

(Witness excused.)

MR. RUBACK: I call Mr. Lautt.

S I D N E Y C. L A U T T, recalled as a witness by the Trustee, having been previously duly sworn by the Referee, was examined and testified further as follows:

MR. RUBACK: Will your Honor permit me two sentences?

THE REFEREE: Even three.

MR. RUBACK: I think, Mr. Referee, and in the presence of Mr. Gartlir I state that these adjournments were not always at the request of the attorney for the trustee --

THE REFEREE: I know, both sides.

MR. RUBACK: Furthermore, your Honor, you know I always have had and will have a high regard and respect for the Court. There was never any attempt to harass this witness.

THE REFEREE: I didn't say that.

MR. RUBACK: You said you would consider it --

THE REFEREE: I said any further adjournment would be considered as harassment.

MR. RUBACK: I simply --

THE REFEREE: You disagree with me. That's all. I said any further adjournment would constitute a harassment.

Of course, you have respect for the Court and the Court has a lot of respect for you, but that has nothing to do with what is happening here. I just feel it has gone far enough.

MR. RUBACK: I had no way of knowing that he would name people with whom he had conversations.

THE REFEREE: Things have to come to an end. If you had properly examined him about these statements you would have probably found out about it.

MR. RUBACK: In his prior testimony he never made those statements, he never mentioned those names.

THE REFEREE: You never asked him about them. Now, let's go ahead.

DIRECT EXAMINATION

CONTINUED BY MR. RUBACK:

Q Mr. Lautt, have you examined Schedule A-3 of the schedules in bankruptcy filed by this bankrupt?

A I have.

Q And have you computed the total of those creditors whose claims were listed by the bankrupt as liquidated in said schedules?

A I have.

Q And do you have the numbers of those claims which have been marked by the bankrupt as liquidated as at January 1963?

A Yes.

Q Will you please read quickly the numbers of those listed in Schedule A-3 as representing creditors whose claims were liquidated as of January 7,1963?

A I will read off 25 numbers: 4, 5, 7, 14, 17,23, 28, 29, 30, 36, 40, 41, 47, 52, 53, 55, 61, 67, 69, 70, 72, 83, 86, 90.

THE REFEREE: What do those numbers represent, Mr. Lautt?

THE WITNESS: They are the numbers alongside of the obligation.

THE REFEREE: The obligations are put in numerical order?

THE WITNESS: In numerical order.

THE REFEREE: And these numbers represent the number assigned to each creditor?

THE WITNESS: In Schedule A.

Q Those numbers represent the obligation of creditors whose claims were liquidated as at January 7,1963?

A That's right. Well, they represent the liabilities to creditors whose claims are liquidated and which obligations arose before January 7, 1963.

Q What is the total of those obligations?

A $278,555.84.

MR. RUBACK: No further questions.

MR. GARTLIR: I have no questions.

THE REFEREE: You may step down.

(Witness excused.)

THE REFEREE: Anything further on that specification?

MR. RUBACK: No.

THE REFEREE: That concludes it. I want to clarify this -- as I understand it we have tried and the parties rested --

MR. GARTLIR: I don't think we have. That is the trustee's case.

THE REFEREE: On page 267 both sides rested on specifications 1 and 2.

MR. GARTLIR: That is correct.

THE REFEREE: And all other specifications were withdrawn on page 268 except 5-J.

MR. GARTLIR: That is right.

THE REFEREE: Now counsel for the trustee has just rested on specification 5-J.

Now, trustee rests.

MR. GARTLIR: I would like to be very brief on a motion before I put any testimony in, if I put any in.

I move to dismiss so much of the objections as relate to paragraph 5-J in this regard: this particular objection relates to the allegation that a criminal offense has been committed in that

the bankrupt has allegedly made false oath in the 21a proceeding regarding applications made to financial institutions containing certain information.

It seems quite clear from the trustee's own case together with the cross examination of the bankrupt himself, the following:

The applications when made were made in a manner and in form at the direction of the bank officer who was in charge of that application.

Further, in at least one instance, the loan that was made was a substitution or I should say an extension of a collateral loan for which other information had been furnished and as to which no testimony has been adduced.

More specifically it has been made clear from the bankrupt's testimony and conceded that the answers given to the questions on the financial questionnaire and statement were given in a manner that the bank officer directed.

Now, what is being claimed here is a false oath with respect to answers given at a time when they were known to be false or given for a purpose that was not valid.

The bankrupt has testified that the answers were given in a way that the bank required them, so that if there is any falsity in the answer, and I state the word loosely, it is in a connection where the bank itself directed that the answer be given that way, and that seems to be conceded.

With respect to the other claim that is being made with regard to liquidated debts, Mr. Lautt's testimony is really not relevant because the bankrupt testified, and it is now quite understandable, that even if that were not so, the amount of the liquidated debts specified to be $278,000 was not known to be liquidated debts to the bankrupt until the time when he came to file his schedules, namely, in March 1965, and the reason for that is, as he explained, and understandably, that the unliquidated nature of most of his obligations and the contingent nature of the others, he was not in a position frankly to specify what debts were or were not liquidated in 1963, and he said he could not even then have given any statement as to all of his debts in 1963, and that he gave a statement of his debts in 1965 in connection with these schedules as best as he

could then, from hindsight, that is from knowledge that he acquired between 1963 and 1965.

In essence, where the bankrupt is being accused in these specifications of making false oaths, it seems to me that the burden upon the trustee of establishing that such false oath was made must be of such nature that it is clear that the bankrupt took advantage of some one in his application, committed a false act that was knowingly false, and I suggest your Honor there is no evidence in the record of that, and I move to dismiss.

THE REFEREE: I think you have missed the point.

I will take your motion and reserve decision on it, but I think you missed the point completely. He is not being accused by specification 5-J with having made a false financial statement.

MR. GARTLIR: I understand that. I said false oath.

THE REFEREE: Not a false oath in the financial statement.

MR. GARTLIR: A false oath in the 21a.

THE REFEREE: He is being accused as follows:

that he was asked in the adjourned first meeting whether the answers contained in these applications were true and he said they were. Now, this statement that he made they claim was wilfully false, and that is the question.

I am not concerned really whether he got a loan or didn't get a loan or whether he was a note co-signer or not, or whether he got credit or did not get credit. If that were the case, if the specification was that he obtained credit by means of a false financial statement -- that is not the charge. All I have to do is to look into and see whether he knowingly and fraudulently on this examination said that the answers to the application for these loans were true. In other words, when he was examined did he then know that the answers were false and did he lie when the trustee said to him were they true. That's all. That is the whole point.

MR. GARTLIR: I think I am aware of the point, unless I be misunderstood, and let the record believe that I have not understood the point. I believe I am specifically aware that the falsity or the truthfulness of what he said in 21a is the

issue before this Court.

THE REFEREE: Therefore, it is not important to me whether the banks told him to make the insertions or omit something from the statements. That would be very important if it was a case of false financial statement, and then that would go to the question of reliance, and that is something else again.

Supposing the bank said to him "Put down no creditors". In other words, make a false financial statement, just say no and it will be okay, and he writes the word no. Well, that would lick the bank if they filed specifications on the ground that he issued a false financial statement.

But now he is asked a couple of years later on an examination whether the answers he gave were true, and now, that is something else again. Whether he was told to put in and whether the bank knew it was false was not the question. The question is did he know it was false, and that is all.

MR. GARTLIR: On that narrow point yes, and I understand that, and what I am suggesting to you is that if the bank did in fact say answer the question this way, and he did, namely, omitting his

creditors, and he thereafter under oath in 21a was asked "Did you give a true answer to that question" and he said "I did give a true answer to that question", I am suggesting to your Honor in effect he gave a true answer.

THE REFEREE: That is something else.

MR. GARTLIR: Because the application itself is conditioned upon what was told him at the time and as men of the world we have to understand there is a difference if the bank said to him "You answer that truthfully" and he did and then here he said "Yes, I did answer truthfully", I think that is a completely different case, and a clear case.

THE REFEREE: The question put to him was "Were the answers true" and the fact of the matter is -- it may have been, I am not deciding it -- that they were untrue. They may not have been false, and that the bank knew about it it would not be a false statement because falsity indicates intent to deceive. If the bank told him to do it there was no intent to deceive and it was not a false statement but it still may be an untrue statement. That is the question now.

MR. GARTLIR: What is the significance of an untrue statement made in the context where it was known to be untrue?

THE REFEREE: What I have to decide is what was in this bankrupt's mind when he was asked the question on his examination and if what he had in mind was that it was true in that he was told to say it and therefore he did not intend to lie on his examination, that is one thing. I will have to search now into the testimony and into his mind to see what he meant when he gave the answer to the trustee. Did he mean to lie to him or did he not. That is the question.

MR. GARTLIR: I have read the 21a examination --

THE REFEREE: It says knowingly and fraudulently, and that is going to hinge on that, whether it was fraudulently. Knowingly, I think he knew what the situation was. Fraudulently is another thing whether he intended to deceive the trustee or not. I will have to decide that.

Have you any testimony?

MR. GARTLIR: Excuse me, your Honor.

THE REFEREE: Off the record.

(Discussion held off the record.)

THE REFEREE: That is one of the reasons I did not think it was so important for you to bring these men down.

MR. RUBACK: I now understand, your Honor.

THE REFEREE: It does not seem to make much difference to me one way or the other. The question was what was in his mind when he testified. Did he deliberately lie to you. That is the question, not what happened then.

MR. GARTLIR: I think the record should also indicate with respect to the 21a examination it does not appear that this witness was afforded the opportunity of seeing those documents as to which he was being examined. I think there is some significance to that, Mr. Referee.

THE REFEREE: I don't know. There is no testimony before me.

MR. GARTLIR: It is in the 21a examination.

THE REFEREE: It is an adjourned first meeting.

MR. GARTLIR: Excuse me, adjourned first meeting.

THE REFEREE: What is in there, that he did not examine what?

MR. GARTLIR: The answers as to which falsity

is claimed were given in response to questions concerning these documents which were produced in court.

THE REFEREE: Wasn't he shown those documents at the time?

MR. GARTLIR: No, the record does not indicate that he was shown those documents. There is no indication of anything having been shown the witness, so that there is the further complication of testing the witness' memory as to whether he did or did not --

THE REFEREE: Do you want testimony on that or do you concede on this examination he was not shown those documents?

MR. RUBACK: I will make no such concession.

THE REFEREE: Let me look at it. What page was it?

MR. RUBACK: I read from page 90, your Honor.

THE REFEREE: Let me look at it. (Examines transcript.)

If it was marked the record would show it.

It does not appear that you showed him anything. He said he might have given Beneficial a statement.

MR. GARTLIR: I also call your Honor's attention,

and again, I am making argument, and I realize it, the testimony with regard to the Chase Bank which you are addressing yourself to now, it is my recollection it was identical with the testimony given in court today, in fact, with reference to the bank officer who authorized these statements and I submit your Honor, there was consistency in the witness' statement --

THE REFEREE: Do you want to introduce any testimony at this time?

MR. GARTLIR: No, your Honor.

THE REFEREE: Do you rest?

MR. GARTLIR: I rest.

THE REFEREE: Both sides rest?

MR. RUBACK: Yes.

THE REFEREE: That concludes the case.

Do you want to submit any memorandum?

MR. GARTLIR: I would like to have an opportunity to submit at least one further submission, either it will be a memorandum or a summary of some kind and I would like a reasonable time to do that.

THE REFEREE: How long?

MR. GARTLIR: Possibly as much as four weeks.

THE REFEREE: Well, we waited this long, nothing

will happen.

MR. GARTLIR: It is a substantial record.

THE REFEREE: Off the record.

(Discussion held off the record.)

MR. RUBACK: I would like to the end of April.

THE REFEREE: Let's put it this way: exchange memorandum or whatever you want to by the 30th of April and then ten days after that which would be the 10th of May to reply.

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(Hearing marked closed.)

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

In the Matter :

-of- : No. 65-B-153

ROBERT A. MARTIN, a/k/a :
R. ALLAN MARTIN, a/k/a
ROBERT ALLAN MARTIN, :

Bankrupt. :

DECISION ON DISCHARGE

APPEARANCES:

LEVY, LEVY & RUBACK, ESQS.
By: ROBERT I. RUBACK, ESQ., of Counsel
Attorneys for Trustee

BARTON NACHAMIE, ESQ., Trustee

HOFHEIMER, GARTLIR, HOFHEIMER,
GOTTLIEB & GROSS, ESQS.
By: BERNARD GARTLIR, ESQ., of Counsel
Attorneys for Bankrupt

ASA S. HERZOG, REFEREE:

The trustee in bankruptcy filed specifications of objections to the discharge of the bankrupt. All specifications, except those designated "1", "2" and "5J" were withdrawn. (SMP 308)

Specification 1 charges that the bankrupt failed to keep books of account or records from which his financial condition and business transactions might be ascertained. Bankr. Act §14c(2).

Specification 2 alleges that the bankrupt failed to preserve books and records from which his financial transactions might be ascertained, specifying receipts, cancelled checks, check books, bank statements, records of transactions involving stock and negotiable instruments, etc. Bankr. Act §14c(2).

Specification 5J charges the commission of an offense punishable by imprisonment under Title 18 U.S.§152 in that bankrupt knowingly and fraudulently made false oath at his examination at the first meeting of creditors when he testified that he gave truthful answers to various applications for loans whereas in truth and fact his answers to questions in said applications relating to statements of income, assets and liabilities, were false. Bankr.Act §14c(1).

The trustee devotes a goodly portion of his memorandum of law to specifications "3" and "4" both of which charge that the bankrupt has failed to explain satisfactorily a loss or deficiency of assets to meet his liabilities. As noted above, however, the trustee withdrew all specifications but "1", "2" and "5J", and consequently, such specifications will not be considered.*

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* Trustee rested on specifications "1" and "2" (SMP 157,168). He withdrew all remaining specifications except specification "5J" (SMP 286).
Trustee rested on specification "5J". (SMP 308).

After the rather lengthy trial of the issues raised by these specifications was concluded, the trustee sought leave to withdraw his objections to discharge, candidly disclosing an offer by a third party to pay a substantial sum of money into the estate. By memorandum decision dated October 10, 1972, I reluctantly denied the application, holding that if the bankrupt committed no act to bar his discharge, he was entitled to and would be granted his discharge, but if he did commit such an act, public policy required that discharge be denied. It is the clearest intent of the Bankruptcy Act that persons of undesirable business ethics are not to be "turned loose to prey on their fellow merchants". Matter of Levy, 127 F.2d 62 (3d Cir.1942).

On March 4, 1965 the bankrupt filed a voluntary petition in bankruptcy. In his statement of affairs, filed herein on September 9, 1966, he stated that his occupation was "Business Broker"* and that he had commenced such business "about January 1963". His sole income for the two years prior to bankruptcy was set forth as "fees as a business broker which amounted to $13,570.00 in 1963, and $15,000.00 in 1964.

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* The bankrupt's explanation of the term "Business Broker" is "one who introduces people to possible mergers and acquisitions"; "introduces people for loan transactions"; "picking up finders fees". (SMP 232)

This l[illegible]dly presents an accurate[illegible]icture of the bankrupt's financial activities. His testimony was that he had been engaged in the purchase and sales of "millions of dollars" of securities for his personal account as a trader in securities, (SMP 246).

The bankrupt owned an 80% interest in Robert A. Martin Associates, Inc., a registered broker-dealer, dealing in the purchase and sale of securities. While transacting securities trades for his own personal account, the bankrupt often used the corporation as a broker for his own personal account. (SMP 190)

The bankrupt was financed by Tracon Corporation and Century Industries, Inc., companies in which he had no financial interest. (SMP 188) These companies were in fact the bankrupt's "bankers" or "factors" (SMP 190) in connection with the purchase and sale of securities. They advanced money for the purchase of securities carried for the account of the bankrupt and advanced money which he loaned to other companies that "might go public in the future through Robert A. Martin Associates, Inc." (SMP 187). These two corporations, Tracon and Century, are two of bankrupt's largest creditors whose claims total almost 70% of all claims filed in this proceeding. (SMP 186)

The bankrupt's schedules indicate liabilities of $1,400,439.64, involving transactions dating back as early as April 1960, with many obligations having arisen in 1963 and 1964. The bankrupt's company, Robert A. Martin Associates, Inc., ceased doing business with the public in 1962 (SMP 208). They were "out of business". (SMP 217). Thereafter, the bankrupt was engaged in assisting that company in liquidating its affairs.

I have discussed the nature and extent of the bankrupt's financial activities because of the rule that books and records must be kept in a manner appropriate to the bankrupt's business. Each case must stand on its own facts, and where the bankrupt was involved in many transactions of an extensive nature, "a substantially accurate and complete record of his affairs is a prerequsite to his discharge". Matter of Underhill, 82 F.2d 258 (2d Cir.1936). The bankrupt is required to produce such records as are ordinarily kept by a person doing the same kind of business. What will justify failure to keep adequate records depends on how extensive and complicated the bankrupt's business is - "a cobbler will succeed with much less than a manufacturer". White v. Schoenfeld, 117 F.2d 131 (2d Cir.1941).

With these general principles in mind, I consider the facts presented in the case sub judice.

We start with the fact that although as a trader in securities the bankrupt dealt in millions of dollars, he kept no ledger of purchases and sales of securities or any journal thereof. (SMP 24,248). It is true that there may be records which are not books from which a bankrupt's financial condition and business transactions for a reasonable period in the past may be ascertained. Matter of Underhill, supra. Thus, it became necessary to examine what records were kept by the bankrupt, what they disclose, what they fail to disclose, and what records, if any, which would furnish the required information are missing.

The trustee's certified public accountant testified that he had examined income tax returns, check books and duplicate deposit slips for the years 1960 to 1965, inclusive, of thirteen banks.* He also received and examined a package of miscellaneous money orders for 1963, 1964 and 1965, folders of brokerage statements and confirmations, folder of transactions between bankrupt and Tracon Corporation for 1961 and

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* American Trust Co., Chase Manhattan Bank, Chemical Bank, Marine Midland Trust Co., Federal Bank and Trust Company, Bankers Trust Co., Hanover Bank, National Newark and Essex Bank, National City Bank, Kings County Trust Co., Trade Bank and Trust Co., Manufacturers Hanover Trust Co., and Royal State Bank.

1962, trading slips, statement of trading accounts relating to dividends, an account current with Tracon (3/8/61-1/31/62) and a running account with Tracon (7/[illegible]/60-1/9/62). He also examined the records of Robert A. Martin Associates, Inc.

However, certain essential records were missing. The bankrupt testified that his records were placed in a warehouse and that he instructed the warehouse to turn all records over to the trustee. He claims that through no fault of his certain records were "lost in transit". (Bankrupt's Post-Hearing Br.p.14). He argues that he satisfied the statutory requirements by turning over all books and records "over which he had control". (Bankrupt's Reply Br.p.5). These arguments will not hold water. This proceeding is not a turnover proceeding where the limit of bankrupt's liability would be the surrender of such books and records as are in his possession or under his control. This is a proceeding relating to the bankrupt's discharge, and the entire thrust of the inquiry is whether the bankrupt's financial condition and business transactions can be ascertained from the books and records which the bankrupt kept and preserved. It is true that under the statute the court may deem the failure to keep or preserve the necessary books and records "to have been justified under all the circumstances of the case". But,

as will be indicated hereinafter, I am unable to find that under all of the circumstances of this particular case, there is any justification for the absence of records which leave such a large gap in the bankrupt's financial transactions.

The bankrupt did not turn over check books and ledgers for 1960. The following bank statements were not produced: American Trust Co., Manufacturers Hanover Trust Co., Bank of Bellwood, Franklin National Bank of Long Island, Bankers Trust, Orange Savings Bank, East River Savings Bank. No checks were produced for the accounts at Bank of Bellwood, Orange Savings Bank, Bankers Trust Co., Franklin National Bank of Long Island, East River Savings Bank. Some records of Chemical Corn and Royal State Bank were produced; others were not. (SMP 65-66).

Statements were made available for the account at Kings County Trust for the periods August 31, 1960 to Nov. 30, 1960; December 30, 1960 to March 30, 1961, and for October and December 1961. The statements for the interim periods between those dates were missing. Missing also were statements of the First National City Bank account and records of the Greenwich Savings Account, as well as papers relating to transactions between the bankrupt and Century Industries, one of the bankrupt's so-called "bankers".

It is not necessary to go into further detail as to missing records, for the foregoing recital is but a prelude to the accountant's testimony as to precisely what financial information was unavailable from the records produced by the bankrupt.

For the four years, 1960 through 1963, the records made available by the bankrupt indicate deposits of $3,430,301.83. Of this sum, the trustee's accountant was able to identify the source of but $189,711.51, and was unable to ascertain the source of $2,825,817!!

For the years 1960 through March 1, 1965, checks were produced which aggregated over $3 million. Because of missing records, the accountant was unable to determine the nature or purpose of checks aggregating over $2 million. Of these undetermined payments, $133,034.34 represent checks payable to cash, and $20,800 (issued in 1960) checks payable to and cashed by the bankrupt.

The following tables graphically demonstrate the deposits and withdrawals by the bankrupt for the years in question as well as the information relating thereto that is unavailable.

DEPOSITS

YEAR	DEPOSITS	NATURE AND SOURCE IDENTIFIABLE	NATURE AND SOURCE NOT IDENTIFIABLE
1960	$ 437,450.58	22,979.45	414,471.13
1961	1,518,705.17	166,307.06	1,352,398.11
1962	1,306,227.93	414,773.62	891,454.31
1963	167,918.15	425.00	167,493.45
1964	----	----	
1965	----	----	
			$2,825,817.00

WITHDRAWALS

YEAR	TOTAL CHECKS	NATURE UNDETERMINED	CHECK TO CASH
1960	$ 413,319.99*	362,107.20	46,813.15
1961	1,379,625.61**	1,071,461.31	56,581.16
1962	1,181,492.15	729,701.14	25,546.95
1963	157,512.18	9,478.71 (Chase Manhattan and First National City)	
		148,000.00	
1964	11,483.25	10,594.10	4,093.08
1965	410.53	310.18	
		$2,331,652.64	

* Excluding living expenses.

** Cancelled checks for $22[illegible]829. were not found.
Debit memos of $25,004.08 were not found.

Clearly, the bankrupt's records were slipshod and careless. In order to determine his business transactions the trustee's accountant was required to piece together the miscellaneous checks, statements and papers that were turned over. From these it could be determined that close to $3,500,000 were deposited from 1960 to 1965 of which the source could not be identified as to some $2,800,000!! During the same period the bankrupt withdrew from his numerous accounts over $3 million of which the nature and purpose of some $2,300,000 could not be determined!!

The bankrupt was engaged in extensive trading transactions, buying and selling securities, and acting as a business broker. As hereinabove noted, he owned 80% of the company bearing his name which for a portion of the time period in question dealt in securities. The bankrupt's appearance before this court disclosed him to be a highly articulate man, with considerably more than average intelligence, and with an understanding of the securities industry. The statutory requirement as to keeping books and records establishes not a "reasonable man" test, but an individualized one, i.e., whether the particular bankrupt's conduct was justified, considering his particular background and education. [In re Sandow, 151 F.2d 807 (2d Cir.1947), Dissenting Opinion of Judge Frank]. The test of what constitutes adequate books

is concerned with the practical problems of what can be expected of the type of person and type of business involved. Morris Plan Industrial Bank of New York v. Dreker, 144 F.2d 60, 61 (2d Cir.1944).

Applying this test to the instant situation, the bankrupt's carelessness and loose practice in keeping and preserving adequate records cannot be condoned on the grounds of ignorance, illiteracy, nor on any other recognizable ground. The bankrupt's claim that records vital for an understanding of his financial transactions were lost in transit from the warehouse or otherwise disappeared is not acceptable. The duty to preserve such records is his and his alone until they are delivered into the custody of the trustee or his agent.

The bankrupt urges that his financial condition and financial transactions may be ascertained by examination of the books and records of Tracon Corporation and Century Industries, Inc. (his "bankers" or "factors" and his two principal creditors) and of Robert A. Martin Associates, Inc.

Considering first Robert A. Martin Associates, Inc.: It may be true that where all of a bankrupt's significant transactions were on behalf of a corporation, whose books are admittedly adequate, personal records recording the same transactions could be said to be unnecessary. In re Halpern,

387 F.2d 312 (2d Cir.1968). By the same token, production of corporate records will not suffice where the bankrupt engaged in substantial business not reflected on the corporate books. In re Muss, 100 .2d 395 (2d Cir.1938). In Muss, the bankrupt claimed that he transacted most of his business through two corporations, and he argued that their books sufficiently disclosed his financial condition and business transactions. But it appeared that two-thirds of bankrupt's assets were outside his investment in the two corporations. The court said;

> "Assuming, therefore, that a bankrupt may satisfy his obligation to record his personal transactions by keeping them in the books of corporations which he controls (see In re Lepine, D.C. 4 F.Supp.808, aff'd 2 Cir., 70 F.2d 1017) it does not appear that the corporate records the appellant has made available are adequate to describe his transactions".

The same situation prevails in the instant case. The testimony very clearly establishes that Robert A. Martin Associates, Inc. had ceased doing business in 1962 and was in the process of liquidation. This is what marks the difference between the instant situation and that presented in In re Halpern, supra. Assuming that the bankrupt could properly satisfy his obligation to record his transactions by entries in the records of the corporation, there remains

$891,454.31 deposited in 1962 and $167,493.45 deposited in 1963, the source of which cannot be determined. It leaves unexplained the nature and purpose of withdrawals aggregating $729,701.14 in 1962, $157,478.71 in 1963, $10,594.10 in 1964, and $310.18 in 1965.

As to the books and records of Tracon Corporation and Century Industries, Inc., the two corporation that financed the bankrupt's trading operations, here the bankrupt's position is utterly untenable. The books and records of third party corporations in which the bankrupt had no interest nor exercised any control simply will not suffice to satisfy the statutory requirement. In In re Slutzkin, 60 F.Supp. 569,572, (E.D.N.Y.1945) the court said:

> "The Referee would relieve a bankrupt of keeping books if his creditors and those with whom he engaged in business kept books which show the financial transactions with the bankrupt. There is no such rule of law. A bankrupt cannot be absolved from keeping books because his creditors with whom he had business transactions keep books. See Benjamin v. Jaspan, 2 Cir.1944, 144 F.2d 58, cert.den. 65 S.Ct.134; In re Low, D.C.N.Y.1933, 4 F.Supp.766; Karger v. Sandler, 2 Cir.1932, 62 F.2d 80; Rosenberg v. Bloom, 9 Cir.1938, 99 F.2d 249 ..." (emphasis added)

It seems clear that the bankrupt cannot rely upon the books of Tracon and Century to fill in the tremendous gaps in his own records. It is also clear that a competent

certified public accountant was unable to jig-saw the records of the bankrupt into a complete or even adequate picture of his financial and business transactions for the years under scrutiny. If competent accountants cannot determine the true condition of a person situated as was this bankrupt, who made huge deposits and withdrawals and traded actively in the security market, the requirements of the Bankruptcy Act compel denial of discharge. In re Miller, 5 F.Supp.913, (D.C.Md.1934); In re Arnold, 1 F.Supp.499, (D.C.N.H.1932).

I turn now to the remaining specification designated "5J" which charges a criminal offense in that bankrupt made a false oath in his examination at the first meeting of creditors. The gist of the allegation is this: the bankrupt had made application to Chemical Bank, Chase Manhattan and Bankers Trust, for loans. When asked at his examination at the first meeting of creditors, whether he had given truthful answers to the questions on those several applications, he testified that he had, whereas, it is alleged, his answers in said application in relation to income assets and liabilities were false.*

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* The trustee is bound by his pleading. The charge of false oath relates only to false oath at the bankrupt's examination at the first meeting of creditors. No consideration will be given, therefore, to the trustee's allegations regarding the truth or falsity of statements in the bankrupt's Statement of Affairs.

It must be observed that the specification is not based upon a false financial statement per se which would bar discharge under Bankr. Act §14c(3). The specification charges that the bankrupt lied in his examination on May 12, 1966 when he stated that he had given truthful answers in his application to the banks for loans - thus making a false oath which would bar discharge under Bankr. Act §14c(1) and 18, U.S.C.§152.

At his examination at the first meeting the following took place with reference to the loan application to Chase Manhattan Bank (Trustee's Exh.35):

> Q. When this application was made by you, you did give truthful answers, did you not?
>
> A. Yes, I did.
>
> Q. No question about that.
>
> A. I don't believe so. (SMP 280)
>
> .....
>
> Q. So, do I understand correctly, you gave Chase Manhattan a financial statement which you considered to be accurate?
>
> A. Yes" (SMP 280,281)

Now, while the trustee proceeded at the hearing on discharge to question the bankrupt concerning applications other than the one to Chase Manhattan Bank (Exh.35), I cannot find in the testimony of the bankrupt at the first meeting

introduced at the hearing on discharge, any statement by the bankrupt regarding the truth of any statement other than the one hereinabove referred to given to the Chase Manhattan Bank. The trustee is therefore limited to that specific statement.

There seems to be no doubt that the answers on that particular statement were untrue. Indeed, the bankrupt conceded that he did not list all his outstanding indebtedness on the application. (SMP 283). But the bankrupt's explanation was that the statement originally had a rider attached consisting of a list of debts "that was so long that the bank told me to just stop it". (SMP 285). This testimony simply is inadequate to support a finding that the statement was false, that is, that it was made with deliberate intent to deceive. Even as to the other statements, on one of which he left blank, and on the other of which he inserted the word "none", in the space requiring a list of his creditors (SMP 285), the bankrupt's explanation was that this was done on the bank's instructions - something I do not find incredible. In any case, the testimony is entirely insufficient to support a finding that the statements were made with deliberate intent to deceive.

Nor do I think the trustee established that the bankrupt's testimony at the first meeting was "knowingly and fraudulently" false, when he said he gave truthful answers to the statements. If the bankrupt believed that the statements were truthful in that he followed the instructions of the bank officials, then his testimony that such answers were truthful meant only that he had not deceived the banks. There was no evidence that the bankrupt's schedules filed in this proceeding were false. Those schedules, signed by the bankrupt under oath, clearly showed that the statements as to his liabilities in the bank applications were incorrect or untrue. Therefore, what possible motive would the bankrupt have in falsely testifying that the bank statements were true? This lends support to my view that the bankrupt's testimony at the first meeting was not made with intent to deceive.

The trustee has failed to show to my satisfaction that there are reasonable grounds for believing that the bankrupt committed an act which would bar his discharge under Bankruptcy Act §14c(1) and accordingly, specification "5J" will be dismissed.

The trustee has shown to my satisfaction that the bankrupt has committed acts which would bar his discharge, pursuant to Bankruptcy Act §14c(2), and the bankrupt has failed to sustain the burden of proving that he has not committed such acts (Bankruptcy Act §14c proviso), and accordingly, specifications "1" and "2" will be sustained, and the bankrupt will be denied his discharge.

Settle order in conformity with the foregoing on five days' notice.

DATED: New York, New York

REFEREE IN BANKRUPTCY

DISTRICT COURT DECISION

PART I MISC. MEMO 555

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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In the Matter

-of-

ROBERT A. MARTIN, a/k/a
R. ALLAN MARTIN, a/k/a
ROBERT ALLAN MARTIN,

Bankrupt.

No. 65 B 153

----------x

PALMIERI, J.

The bankrupt, Robert A. Martin, appeals from a decision of Referee Asa S. Herzog which denied him his discharge on the ground that the bankrupt "failed to keep or preserve books of account or records from which his financial condition and business transactions might be ascertained." Bankr. Act Sec. 14c(2), 11 U.S.C. Sec. 32c(2). For the reasons hereinafter set forth, the Referee's decision is affirmed.

The bankrupt filed a voluntary petition in bankruptcy on March 4, 1965. His Schedules set forth assets of $36,541.00 and total liabilities of $1,400,439.64. The bankrupt's Statement of Affairs stated that his

occupation was "Business Broker" which involved bringing persons together for possible mergers, acquisitions, and loan transactions. As the Referee found, however, this hardly presented an accurate picture of the bankrupt's financial activities. The bankrupt's true financial dealings involved the purchase and sale of millions of dollars of securities for his personal account and as a trader in securities. He owned an 80% interest in Robert A. Martin Associates, Inc., a registered broker-dealer which he often used as a broker for his personal account.

The trustee in bankruptcy filed specifications of objections to the bankrupt's discharge, all but three of which were subsequently withdrawn. After a lengthy trial of the issues raised by the remaining specifications, the trustee sought leave to withdraw his objections because a third party had offered to pay a substantial sum of money into the estate. By memorandum decision dated October 10, 1972, the Referee denied the trustee's application, holding that if the bankrupt had committed an act to bar his discharge public policy required that the discharge be denied. By his decision dated December 3, 1973, the Referee sustained the trustee's objections based on Sec.14c(2). It is from that decision that the bankrupt now appeals.

The Referee made extensive findings below setting forth in great detail the bankrupt's missing records and unaccounted for transactions. He found, inter alia, that the bankrupt did not turn over checkbooks and ledgers for 1960, did not produce bank statements from seven banks where he maintained accounts, and did not produce checks for accounts at five banks. For the four years 1960 through 1963, the bankrupt's records indicated deposits of $3,430,301.83. Of this sum, the trustee's accountant was unable to identify the source of $2,825,817.00. For the years 1960 through March 1, 1965, checks were produced which aggregated over $3 million. The accountant was unable to determine the nature or purpose of checks aggregating over $2 million. These undetermined payments included $133,034.34 in checks payable to cash and $20,800 in checks payable to and cashed by the bankrupt.

Section 14c(2) of the Bankruptcy Act, in pertinent part, provides:

> (c) The court shall grant the discharge unless satisfied that the bankrupt has . . . (2) destroyed, mutilated, falsified, concealed, or failed to keep or preserve books of account or records, from which his financial condition and business transactions might be ascertained, unless the court deems such acts or failure to have been justified under all the circumstances of the case; . . . Provided,

> That if, upon the hearing of an objection to a discharge, the objector shall show to the satisfaction of the court that there are reasonable grounds for believing that the bankrupt has committed any of the acts which, under this subdivision, would prevent his discharge in bankruptcy, then the burden of proving that he has not committed any of such acts shall be upon the bankrupt.

Section 14c(2) has been construed to require that books and records be kept in a manner appropriate to the bankrupt's business. In re Northridge, 53 F.2d 858 (S.D.N.Y. 1931). What will justify a failure to keep adequate records depends on the extent and complexity of the bankrupt's business. Baker v. Trachman, 244 F.2d 18, 20 (2d Cir. 1957); White v. Schoenfeld, 117 F.2d 131 (2d Cir. 1941). Where the bankrupt was involved in many transactions of an extensive character, a substantially accurate and complete record of his affairs is a prerequisite to his discharge. In re Underhill, 82 F.2d 258 (2d Cir.), cert. denied sub nom. Underhill v. Dent, 299 U.S. 546 (1936).

The proper standard to use in applying Sec.14c(2) is not a reasonable man standard; rather, it is an individualized one, taking into account the practical problems of what can be expected from the type of person and the type of business involved. Morris Plan Industrial Bank of New York v. Dreher, 144 F.2d 60, 61 (2d Cir. 1944).

Thus, unless the bankrupt can show that under the circumstances his failure to keep and preserve records was justified, he is not entitled to the benefits of a discharge. In re Sandow, 151 F.2d 807 (2d Cir. 1945).

The Referee found the bankrupt to be a highly articulate man with considerably more than average intelligence and with an understanding of the securities industry. As noted above, his financial activities involved large sums of money and rather complex transactions. In the light of these findings, the Referee was fully justified in concluding that "the bankrupt's carelessness and loose practice in keeping and preserving adequate records cannot be condoned on the grounds of ignorance, illiteracy, nor on any other recognizable ground."

The bankrupt argues ~~that he fulfilled~~ his obligation under the statute by shipping a substantial part of his records to a warehouse and that he should not be barred from discharge because through no fault of his own a vital portion of these records was lost in transit from the warehouse to the trustee. The bankrupt made the same argument below, and the Referee found it to be unacceptable. The bankrupt now argues that the Referee's decision was based upon an inaccurate view of the law. He contends that the Referee rejected his explanation of the loss of the records as unacceptable as a matter of law.

This court does not so construe the Referee's holding. Under the proviso to Sec.14c, the burden is on the bankrupt to prove any justification for noncompliance with the record-keeping requirements. The Referee heard the bankrupt's testimony concerning the loss of his records in transit. The Referee had the opportunity to judge the bankrupt's credibility. Based on his assessment of the testimony, the Referee rejected the bankrupt's claim that vital records had been lost. This was a finding of fact, not a conclusion of law. Bankruptcy Rule 810 requires this court to accept the Referee's findings of fact unless they are clearly erroneous and to give due regard to the opportunity of the Referee to judge the credibility of the witnesses. It is clear to this court that the Referee's finding was not clearly erroneous.

The bankrupt next argues that the corporate records of Robert A. Martin Associates, Inc. were adequate substitutes for the bankrupt's personal records. The Referee found that the trustee's accountant had examined these records. The bankrupt, however, claims this finding is clearly erroneous, citing testimony by the accountant that he "made no real examination of the records of the corporation." Had the accountant examined these records, the bankrupt argues, he would have been able to piece together the bankrupt's business activities.

The bankrupt misapplies the "rule" that corporate records are acceptable in the absence of personal records to discharge a bankrupt's obligations under Sec.14c(2). In re Sandow, 59 F. Supp. 782 (S.D.N.Y. 1944), aff'd 151 F.2d 807 (2d Cir. 1945), on which the bankrupt relies, holds that a court may accept corporate records "when their character is such that they are competent substitutes for the personal records which the statute requires." 59 F. Supp. at 784. Here, as the Referee correctly pointed out, the corporation's records were not adequate substitutes. The bankrupt testified that Robert A. Martin Associates ceased doing business in late 1962 or early 1963, that it was in liquidation at that time, and that it engaged in no significant loan or securities transactions after 1962. Consequently, the Referee found that the corporate records would be inadequate to explain transactions after 1962. The bankrupt has not directed this court to any evidence in the record to dispute this finding. Even if the Referee erred in finding that the trustee's accountant examined the corporate records, there is still no evidence that the corporate records contained the necessary data pertaining to post-1962 transactions. The bankrupt's own testimony, in fact, establishes that the corporate records did not contain this data. Thus,

the bankrupt's reliance on In re Halpern, 387 F.2d 312 (2d Cir. 1968) is misplaced. In Halpern, unlike the instant case, the corporate records fully documented the bankrupt's personal transactions.

Finally, the bankrupt argues that he has been unduly prejudiced by the trustee's unreasonable delay in contesting the discharge. He contends that he could have explained the transactions in question here if the trustee had sought explanations when the matters were still fresh in his mind. The bankrupt asserts that three and a half years elapsed after he filed his petition before the trustee filed his objections to discharge and that almost ten years elapsed between the transactions in question and the trial on the trustee's objections.

While this court deplores the excessive length of these proceedings, it does not agree that this delay was caused by the trustee's failure to proceed diligently. It is apparent that extensive examinations of the bankrupt and other witnesses were required because of the condition of the bankrupt's records. These examinations were not concluded until October 1968. The bankrupt thereafter substituted counsel and requested an adjournment to enable his new counsel to familiarize himself with the proceedings. The bankrupt's discharge was denied on

December 3, 1973, whereupon the bankrupt obtained, over the trustee's objection, an order staying creditors from attempting to collect on their debts pending the outcome of this appeal. The bankrupt delayed this appeal for over a year and a half endeavoring to settle the claims of certain creditors. In light of this history, the bankrupt is in no position to argue that he was unduly prejudiced by any procrastination of the trustee.

The Referee's denial of the bankrupt's discharge is affirmed. It is so ordered.

Dated: New York, N. Y.
October 7, 1976

EDMUND L. PALMIERI
U. S. D. J.

Copy

DISTRICT COURT DECISION

PART I MISC MEMO 555-A

S. DISTRICT COURT
E.D.N.Y.
NOV 1976

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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In the Matter

-of-

ROBERT A. MARTIN, a/k/a
R. ALLAN MARTIN, a/k/a
ROBERT ALLAN MARTIN,

No. 65 B 153

#45-325

Bankrupt.

----------x

PALMIERI, J.

The bankrupt, Robert A. Martin, has moved this court for leave to reargue his denial of a discharge in bankruptcy which this court affirmed by Memorandum Opinion dated October 7, 1976. For the reasons hereinafter set forth, the prior opinion of this court is reaffirmed in all respects.

In his motion papers the bankrupt asserts that this court overlooked certain statements in the record of the proceeding before the Referee. One such statement indicated that on December 9, 1965, the Trustee acknowledged that he had received "80 or 85% or probably more of the books of the bankrupt's corporation and the bankrupt personally." Despite this statement the Trustee conducted nine more examinations of the bankrupt over the following two years.

The other statement in the record below which the bankrupt asserts this court overlooked involved an admonition by the Referee to the Trustee that the repeated examination of the bankrupt had come to the point of harassment. The bankrupt has previously argued that the Trustee's procrastination violated his duty to investigate expeditiously and hindered the bankrupt's efforts to reconstruct his business affairs in this proceeding.

This court did not overlook the statements which the bankrupt now presses before it. These statements were duly considered along with the rest of the record of the proceedings below. As to the first statement, the bankrupt incorrectly assumes that the amount or percentage of his records turned over to the Trustee at any given time is the relevant consideration. The issue here is not the quantity of records provided, but rather the quality of those records. Section 14c(2) of the Bankruptcy Act, 11 U.S.C. Sec. 32c(2), deals with records "from which his /the bankrupt's/ financial condition and business transactions might be ascertained." Thus the bankrupt could conceivably provide 100% of his records to the Trustee and still be denied his discharge if those records were worthless and did not reveal his financial condition and business transactions. This was a comparable case. Here, the Referee found and this court affirmed his finding to the effect that the source for

deposits in the amount of $2,825,817.00 could not be ascertained and the nature and purpose of checks aggregating over $2 million could not be determined.

As to the second statement, it is apparent from the Referee's decision that the delay was caused primarily by the condition of the bankrupt's records. While the Trustee may have been partly at fault, it is clear that the bankrupt's substitution of counsel and resultant adjournment, his obtaining of the September 3, 1973 order staying creditors from collecting on their claims, and his year and a half delay in attempting to settle certain claims estop him from complaining about the duration of these proceedings. The Referee did admonish the Trustee for the harassing nature of the examinations, but he at no point ruled that the Trustee's conduct was so harassing as to warrant granting the discharge. The grant or denial of a discharge, as the Referee held, must be viewed in the context of the public policy embodied in the Bankruptcy Act. Consequently, the Trustee's conduct is a relevant, but not a controlling factor. This court weighed all of the relevant factors in reaching its earlier decision.

The court has considered the issues now raised by the bankrupt and finds them insufficient and unpersuasive. Accordingly, the bankrupt's motion for reargument is granted

and upon reconsideration the decision of this court of October 7, 1976, is adhered to in all respects.

It should be noted that after this opinion was written but before it was filed, the bankrupt filed a Notice of Appeal from this court's order of October 7, 1976, thereby removing this court's jurisdiction in the case. This opinion has been filed, therefore, only to provide whatever assistance it may to the litigants and the appellate court.

Dated: New York, N. Y.
November 3, 1976

EDMUND L. PALMIERI
U. S. D. J.

CERTIFICATE OF SERVICE

Re:

Martin - Bankrupt

STATE OF NEW JERSEY :
: ss.:
COUNTY OF MIDDLESEX :

I, Muriel Mayer, being duly sworn according to law, and being over the age of 21 upon my oath depose and say that: I am retained by the attorney for the above named **Bankrupt Appellant**

That on the **20th** day of **December**, 1976, I served the within

Brief and Appendix for Appellant

in the matter of **Martin - Bankrupt**

upon **Finley, Kumble, Heime, Underberg & Grutman, Esqs., 425 Park Avenue, New York, New York**

by depositing **two (2)** true copies of ~~the same~~ **the Brief and 1 copy of Appendix** securely enclosed in a post-paid wrapper, in an official depository maintained by the United States Government.

Muriel Mayer
Muriel Mayer

Sworn to and subscribed
before me this **20th** day
of **December** 1976.

Lorraine Leotta
A Notary Public of the
State of New Jersey.

LORRAINE LEOTTA
NOTARY PUBLIC OF NEW JERSEY
My Commission Expires April 13, 197/